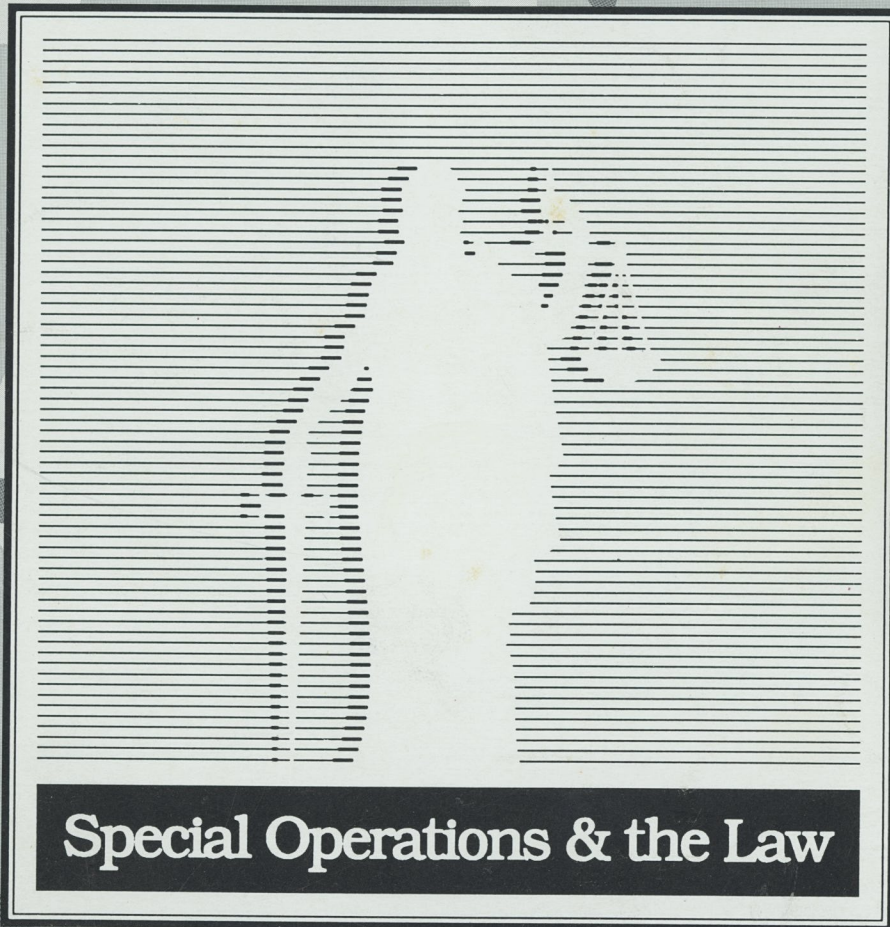


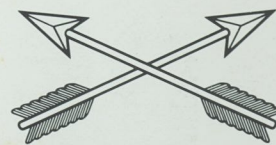
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Special Warfare

The Professional Bulletin of the John F. Kennedy Special Warfare Center and School



From the Commandant



Special Warfare

As military objectives become increasingly political, military operations are increasingly restricted by law, and special operations are no exception.

In fact, despite the no-holds-barred image that some people still have of SOF, our actions are closely tied to the law. The establishment of the Assistant Secretary of Defense for Special Operations and Low-intensity Conflict (ASD-SO/LIC), the creation of the U.S. Special Operations Command and the definition of SOF missions were all included in the 1986 DoD reorganization legislation and have now become a part of public law.

In every area, SOF components and their missions are further governed by U.S. laws and international agreements. The provision of security assistance, the actions of our soldiers in other countries, the types and amounts of humanitarian assistance we can provide, the wear of uniforms in combat and the treatment of prisoners are only a few of the areas in which our actions are prescribed by law. In fact, one of the components of SOF, Civil Affairs, has the mission to assist the military commander in meeting his legal obligations to the civilian population. Operation "Just Cause" in Panama underscores both the reality and the importance of that role. Our policy, legal and operational problems cannot be separated, and a judge advocate who is familiar with operational law is becoming an increasingly important member of the SOF commander's staff.

Notwithstanding operation "Just Cause," recent developments in world politics make it more probable than ever that low-intensity conflicts will be the ones which the U.S. will face in the future. This makes it likely that SOF will be called upon, and often. LIC presents even more of a legal and ethical challenge, since its inherent ambiguities and its changing nature make our decisions less clear-cut. The need for a judge advocate is obvious, but the fact that SOF often operate in small groups and in remote areas makes it imperative that our individual soldiers have high standards and are conscious of the legal aspects of their actions.

Low-intensity conflict is characterized by the primacy of political objectives which often involve sen-

sitive legal issues. Since popular support is essential in the situations we will face, our effectiveness in LIC will often depend less upon our use of force than upon our achievement of political legitimacy. Public support will go to the side whose ideology and adherence to laws give it the "moral high ground." We must be careful to avoid the negative political impact which might result from any violation of international, host-nation or U.S. law.

The increasing attention given to special operations also means that our actions are more closely scrutinized by the news media. While this may give greater coverage to our successes, it will also ensure more publicity for our failures, and a failure in implementing the law could be devastating to public support in the operational area and at home.

In our courses at the Special Warfare Center and School — whether Civil Affairs, Psychological Operations or Special Forces — we teach soldiers the need to think as well as act. By studying how laws affect SOF, considering various unresolved legal issues and defining rules ahead of time, we can ensure that we will be guided by the law when the time comes to act.

It is up to each of us in SOF to maintain high personal standards and to develop an awareness of the legal aspects of our missions. Only by resolving any conflicts between legal and operational constraints can we accomplish our missions and uphold the law at the same time. In the complex environment we face now and in the future, we must achieve both if we hope to guarantee stability around the world. Understanding the operational environment, recognizing political primacy and ensuring legitimacy are the SOF imperatives appropriate for your consideration and contemplation as you read this issue.

Brig. Gen. David J. Baratto

Commander & Commandant

Brig. Gen. David J. Baratto

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Letters

Special Warfare

UW doctrine not outmoded

The basic premise of Maj. Robert Brady's article, *Mass Strategy: A Different Approach to Unconventional Warfare* (Summer 1989) is that Mao's mass strategy of insurgency is the model that the United States should adopt in its support of insurgencies, because current U.S. unconventional-warfare doctrine is outmoded. The author feels that since U.S. UW doctrine stems from our World War II experience, it is incapable of adjustment to present situations.

My purpose in writing this letter is to show that: 1) the author fundamentally misunderstands U.S. UW doctrine and its origins and 2) the author mistakenly rationalizes the use of some techniques of intimidation and manipulation associated with the Communist Chinese and Vietcong models of mass-oriented insurgencies.

According to the author, current U.S. UW doctrine is a purely military model derived from WWII and therefore incapable of handling the necessary transition to the mobile-warfare stage of insurgency. First, transition to mobile warfare is not an absolute necessity. Several insurgent movements have achieved their political goals of national independence since WWII without overthrowing the government. Examples are: the Haganah in Palestine, the FLN in Algeria, and the EOKA in Cyprus. Also, it merits noting that the communist influence within these organizations was not dominant. Secondly, during WWII, the U.S. supported resistance movements, not insurgencies. There was no need to raise massive numbers of guerrilla units;

the primary U.S. UW mission was to conduct small-unit actions in the enemy's rear in support of the theatre commander. Buildup and concentration of ill-trained guerrillas in the face of the overwhelming Axis powers would have meant certain destruction for the fighters. U.S. UW doctrine is sufficient to address the military aspects of fighting an insurgent war.

The author states that U.S. UW doctrine is based upon the "military strategy" model of insurgency. The strategy he refers to is actually called the "left strategy" of insurgency. It is based entirely upon acts of violence against the regime in power. This strategy is rare and applies only to insurgencies, not resistance movements. The insurgents do not have a developed political arm: they literally attempt a military takeover of the government. The left strategy succeeded with Castro and failed with Che Guevera. U.S. UW doctrine is not based on this model.

The best choice to address those political aspects of an insurgency not covered by our resistance-movement-based doctrine is, as the article states, the mass-oriented strategy, but not necessarily Mao's model, which the Red Chinese and Vietcong practiced in their "wars of liberation." Both groups employed the exact techniques of terror and intimidation that the author talks about in such glowing terms as "armed political agitation teams" (p. 30). Thousands of innocent civilians have died in the name of political agitation. Maj. Brady seems to have a preoccupation with armed force to sell the ideas of democracy. Does he see the uncommitted populace in contested areas as hostile and need-

ing to be manipulated? That personal attitude does not belong anywhere near the JSOA or within the Civil Affairs portions of SOF doctrinal literature that the author is helping to revise at the SWCS.

Capt. Jeff Brown
USAJFKSWCS
Fort Bragg, N.C.

Say 'no' to drug wars

Before we end up engaged in a shooting war in Colombia as a result of the administration's "war on drugs" there are several hard realities that have to be faced:

Drug-related crops (such as coca, opium and marijuana) are considered to be legitimate cash crops throughout much of the world. In many countries, they are one of the primary sources of national income. To attack drug-related crops will be seen by the peoples of these countries as foreign imperialism at its worst. If the United States considers it legitimate for its government to promote the export of American tobacco, then what is the sense of the U.S. launching a war against drug producers in other countries? Already, the U.S. war on drugs in Latin America has created an alliance between coca-growing peasants, the drug cartels and communist guerrillas, who have banded together for mutual survival. It is a cardinal rule in low-intensity conflict that a force cannot win unless it has the support of the people.

There is no objective appreciation of the situation. Politicians make much use of sensational metaphors, making a false analogy to a military situation. We are told that drugs are "invading" the country and "killing" people.

Drug use exists because people voluntarily choose to use drugs. Those people who die from drug use die as a result of their own actions, not because a foreign enemy is attacking them. The war on drugs got started as an publicity move by the previous administration to show the public it was doing something. Often, the war on drugs has become the tool of ambitious politicians who seek to gain or retain office by claiming that they are saving America from a foreign threat. In point of fact, the U.S. is not being swept by a "drug epidemic": Drug use has been fairly constant for the last decade. While preferences for different types of drugs might change, the number of drug users as a whole remains fairly stable.

Simply dumping more resources into the anti-drug war will magnify the errors. The entire war on drugs seems to be based on circular arguments: we are told that the cartels must be suppressed because they provide Americans illegal drugs; at the same time, we are told domestic drug use must be stopped because it supports the cartels. We are simultaneously told that American drug users are the innocent victims of the drug cartels, and then that they are their accomplices.

The fact of the matter is that a real war on drug production, along with interdiction of U.S. borders, cannot be won by any quick fix. Is the U.S. public prepared for the years of combat on foreign soil, as well as the thousands of casualties, that a victory would entail? Make no mistake about it, to knock out coca production totally would mean having to station American troops throughout Colombia, Peru and Bolivia in endless counterinsurgency warfare. Are those politicians who now are clamoring for the military to get involved still going to be there when the body bags start coming back?

In many ways, the real threat to Americans is coming from the government itself, through its prosecution of the war on drugs. Much of

the war on drugs reeks of anti-democratic tactics: suspension of due process, creation of detention camps and re-education centers, government-sponsored media campaigns which stigmatize illicit drug users as a minority to be deprived of their rights, and attacks on the innocent through zero tolerance, mandatory drug testing and arbitrary search-and-seizure procedures.

The armed forces are allowing themselves to be sucked into enforcing a domestic political policy without any due consideration for what the national objectives are, or what the strategies are to win. To be blunt, drug-enforcement agencies have proven their incompetence in the past by their failure to stop or even diminish the flow of drugs. So now they call in the military to do the job for them. The armed forces are supposed to be defending American liberty, not tearing it down in the interests of a narrow partisan program.

In congressional hearings in 1986, then-Secretary of Defense Frank Carlucci had the courage to tell the Congress that the participation of the armed forces in the war on drugs was not only unfeasible, but also dangerous to American national security and liberties. Let us hope that we have the courage today to say "no" to those bureaucrats who want to use the military as enforcers for their personal ambitions.

Capt. Joseph Miranda
U.S. Army Reserve
Salinas, Calif.

160th omitted

First I would like to say that I enjoy reading your magazine, *Special Warfare*. It is a very professional and informative publication in the special-operations arena.

However, after looking at the cover of the "Unified Special Operations" issue (Spring 1989) and reading the articles, it would appear that you believe the U.S. Air Force is the only SOF aviation asset.

It alarms me to believe that an "Army" publication would totally disregard or ignore its organic special-operations aviation. I am referring to the **160th Special Operations Aviation Regiment**.

Perhaps a bit of research on your part will show that Army SOF aviation assets are as diverse and capable as our sister-service helo units.

Maj. Ray A. Nelson
Co. C, 160th Special Operations
Aviation Regiment (Abn)
Fort Campbell, Ky.

(The Unified Special Operations issue was an attempt to inform members of Army special-operations forces about a variety of joint-special-operations topics, including the status and goals of USSOCOM, the organization and establishment of ASD-SO/LIC, the rewards and requirements of joint-duty assignments, and the special-operations capabilities of our various sister services. In that issue, at least, we wanted to acquaint our readers with what other commands and services were doing, not the Army. We did not intend to slight Army SOF by omission. We are fully aware of the existence and importance of the 160th, and we welcome articles dealing with the 160th, or with SOF aviation in general, for use in future issues. — Editor)



Special Warfare welcomes letters from its readers but may have to edit them for length. Please include your full name, rank, address and phone number (Autovon, if possible). Address letters to Editor, Special Warfare; USAJFKSWCS; Fort Bragg, NC 28307-5000.

No special rules for special operations:

The relationship of law and the judge advocate to SOF

by
Maj. Gary L. Walsh

War is not what it used to be. Although the United States still faces and prepares to counter the threat of conventional conflicts, it is much more likely that those in which the United States will become involved will be unconventional.

These conflicts short of conventional war have been variously categorized as low-intensity conflicts,¹ military operations short of war,² and simply as unconventional conflicts.³ Although the various missions of these conflicts include those which can be performed by conventional units, it is likely that the majority will be performed by special-operations forces.

The creation of the Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict⁴ and a new unified command, the U.S. Special Operations Command,⁵ indicate that special-operations forces will play a significant role in any future conflict in which the U. S. may be involved.

Special-operations missions often do not fit neatly into the legal framework that supports conventional military operations. But despite the unique nature of these missions and the frequent need to conduct them in a discreet fashion, they are not exempt from the requirement to comply with domestic and international law. In this regard, there are no special rules for special operations.

Missions

Military operations which fall into these low-intensity conflicts include supporting resistance movements;⁶ countering insurgencies against constituted governments; combating terrorism; peacekeeping; and peacetime contingency operations.

One of the unique characteristics of special-operations forces is their flexibility. They may be employed for a wide variety of missions, ranging from tactical to strategic. The

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vast scope of special operations is evidenced in its official definition:

*Operations conducted by specially trained, equipped, and organized DoD forces against strategic or tactical targets in pursuit of national military, political, economic, or psychological objectives. These operations may be conducted during periods of peace or hostilities. They may support conventional operations, or may be prosecuted independently when the use of conventional forces is either inappropriate or infeasible.*⁷

Special operations are typically conducted after theater commanders or other appropriate authorities⁸ receive taskings issued by the National Command Authority. Because of the sensitivity and urgency of certain missions, the first requirement for special operations may be in peacetime, followed later by contingency and wartime requirements.⁹

The peacetime missions of special-operations forces include: assisting foreign governments or other elements of the U.S. government; training, advising and supporting foreign military and

paramilitary forces through security-assistance programs; supporting foreign-internal-defense operations; terrorism counteraction; conducting show-of-force operations; and conducting humanitarian operations.¹⁰

The wartime missions of SOF include: foreign internal defense; unconventional warfare; special reconnaissance; strike operations; strategic and tactical psychological operations; civil-affairs support of general-purpose forces; civil administration; and special light infantry.¹¹

DA policy on special operations

The Department of Army policy on special operations recognizes the very special, often sensitive, and extremely complex role played by SOF in peace and war.¹² Nevertheless, DA requires that all Army special operations comply with United States law, national policy, Department of Defense directives and Army regulations. This requirement exists regardless of whether special operations are conducted during an international or non-international conflict or during

peacetime.¹³ Recognizing the need for legitimacy in special operations, DA requires that a judge advocate be consulted throughout the operational planning process "in order to ensure that special operations plans comply with United States law and to provide maximum protection to special-operations personnel in the event of their capture or detention."¹⁴

Need for a legal adviser

Army SOF currently receive operational-law support from the staff judge advocate, 1st Special Operations Command. Additionally, a judge advocate is assigned to each Special Forces group, the 4th Psychological Operations Group, and the 75th Ranger Regiment. These attorneys are responsible for providing the legal advice that a special-operations-unit commander requires to perform his assigned mission.

Special-operations missions are politically sensitive, particularly in a peacetime or low-intensity-conflict environment; therefore, the area of special operations is fraught with potential legal pitfalls.

The commander must consider not only the effect of traditional law-of-war requirements on his operation, but also the requirements of domestic United States law, such as security-assistance and intelligence statutes, and international law in the form of mutual-defense treaties and host-nation-support agreements. Failure to be aware of and comply with these legal and policy demands could result in embarrassment for the commander, at best, or a criminal investigation and prosecution, at worst.

A special-operations commander should be provided legal advice by a judge advocate who knows not only the applicable law, but also the business of his client. The judge advocate must have a working knowledge of the force structure, missions, doctrine and tactics of the special-operations forces he advises.



U.S. Army photo

The various missions of soldiers in SOF, such as this psychological operations specialist, must comply with law, national policy and DoD directives.

This knowledge may come from prior service in special-operations units, from special-operations training (e.g., Special Forces or Ranger training), or from working closely with the commanders and staff of the unit. Just as important, the special-operations legal adviser must have access to information in order to do his job effectively. He should possess a top-secret clearance, as a minimum, and should be eligible for access to sensitive, compartmented information.

Role of the SOF legal adviser

The principal function of any command judge advocate is to provide advice on legal matters to the commander and his staff. Accordingly, commanders and staff are accustomed to soliciting and receiving advice from the judge advocate on traditional legal matters, such as military justice and administrative law. These same individuals are much less likely to envision the judge advocate as a staff expert on operational law, however. As a result, the judge advocate may have some difficulty convincing commanders and staff members that he is a force multiplier and can assist in the accomplishment of the mission.

SOF commanders and staff members should be aware of the Joint Chiefs of Staff requirement that a legal adviser provide advice during joint and combined operations and attend planning sessions for all joint and combined exercises.¹⁵

There is also a U.S. Army Forces Command requirement that an operational-law adviser review all operations plans and orders.¹⁶

Additionally, DA policy requires that judge advocates be consulted throughout the planning process.¹⁷

While these actions are important, the most effective step that the judge advocate can take is to establish his credibility. Because of the sensitivity of the missions with which they are tasked, the commanders and staff of SOF units are necessarily very guarded in their

relationships with those outside the unit. In order to advise his clients effectively, the judge advocate must be accepted as a member of the unit. He must foster a close working relationship, particularly with the command's operations-and-intelligence staff, by demonstrating that he is knowledgeable, willing to help, and can be trusted.

This requires that the judge advocate participate in the traditional staff functions, such as meetings, briefings and ceremonies. The judge advocate must also be pre-

“Special-operations-forces commanders and staff members should be aware of the Joint Chiefs of Staff requirement that a legal adviser provide advice during joint and combined operations and attend planning sessions for all joint and combined exercises.”

pared to perform such non-legal duties as range safety officer, jumpmaster on airborne operations, or officer-in-charge of the night shift in the Tactical Operations Center during deployments.

The judge advocate should also make an effort to observe or participate in the training of the soldiers he supports. By engaging in these types of activities, the judge advocate will accomplish two objectives. First, he will gain a better understanding of the mission of the unit and the capabilities and personalities of the soldiers and their leaders. Second, the judge advocate will demonstrate to the command and staff that he is a soldier as well as an attorney, and that he can carry his own weight as a member of the

unit. At the same time, the judge advocate must guard against the danger of losing sight of the fact that he is an attorney with a specific obligation and responsibility — to dispense objective and well-reasoned legal advice. He must not fall into the “can do” syndrome that ultimately ill serves the commander.

Law-of-war training

All SOF soldiers must receive law-of-war training commensurate with their duties and responsibilities.¹⁸ This training must address not only the conventional legal issues that arise in armed conflict, but the situations peculiar to special operations as well. The following discussion addresses those issues most often raised by SOF soldiers during law-of-war training sessions.

Use of the enemy's uniform

SOF, particularly Special Forces, may be tasked with a mission that requires them to infiltrate territory controlled by the enemy. The team that receives the mission may consider wearing the uniform of the enemy to ease its infiltration of, and operation within, enemy territory. Thus, these soldiers must be advised of the very narrow circumstances under which they may disguise themselves in the enemy's uniform and the ramifications resulting from their being captured in this uniform.

Article 23f of the 1907 Hague Regulations¹⁹ prohibits the improper use of the enemy's uniform. The difficult issue, however, is that of determining a proper use of the enemy's uniform. It is well settled that wearing the enemy's uniform while engaged in actual combat is unlawful.²⁰ Nevertheless, the enemy's uniform may be used by soldiers to facilitate movement into and through the enemy's territory.²¹ The soldier and his commander must recognize that if the soldier is captured while wearing the enemy's uniform, he will very likely be denied the status of a prisoner of

war.²² While it is U.S. policy that the enemy's uniform may be used properly for infiltration of an enemy's lines,²³ Article 39 of Protocol I to the Geneva Conventions prohibits this and most other uses of the enemy's uniform.²⁴ Thus, an enemy nation, party to Protocol I, may consider the use of its uniform by U.S. forces as a war crime.

Handling prisoners of war

One question that is frequently asked during law-of-war training concerns the proper disposition of prisoners of war captured by a special-operations-forces team while on a mission deep in enemy territory. This question evidences a legitimate concern, as several of the wartime special-operations missions would require SOF to operate in enemy territory, often for extended periods of time.

SOF teams would likely be small in number, usually 12 or fewer soldiers. A team on one of these deep-penetration missions that captures

an enemy soldier would be substantially disadvantaged. It would have to dedicate one or two members to guard the prisoner, an action which would detract from the team's primary mission. Moreover, the prisoner would undoubtedly hamper the movement of the team and increase the likelihood of the team's detection by the enemy.

It is sometimes suggested that the "field solution" to the problem is to shoot the prisoner. This, of course, would constitute a grave breach of the Geneva Convention for Prisoners of War,²⁵ and U.S. doctrine clearly states that prisoners of war cannot be killed under such circumstances.²⁶

Given this fact, the judge advocate must propose a credible solution. The following courses of action, with their obvious advantages and disadvantages, may be discussed in an effort to force SOF personnel to consider how they might realistically deal with this issue within the bounds of the law.

- Evacuate the prisoner, prior to

completing the mission, to an existing prisoner-of-war camp under United States control. This course of action contemplates an ability to procure, through operational channels, some sort of transportation out of the area of operations.

- Bind or confine the prisoner and gag him in order to suppress sound. Depending on the size of the unit and the mission, the prisoner could be left under guard or moved with the unit during the conduct of the mission.
- Release the prisoner of war. The enemy soldier would then have to find his way back to his own forces. If he is wounded, medical care should be provided, as available, and the enemy soldier should be left where he would be found.²⁷

Assassination

As part of the wartime missions of strike operations and unconventional warfare, SOF may be re-



German prisoners of war during World War II await transportation to more permanent internment facilities. Prisoners taken by SOF teams present unique problems in complying with the Geneva conventions and completing the team mission.

Courtesy Special Warfare Museum

quired to attack tactical or strategic targets deep in enemy territory. It is possible that one of these targets may be a specific member of the enemy force.

Would the killing of a specific enemy constitute assassination, or would it be a lawful method of waging war? Special-operations planners and operators must be able to distinguish between the lawful and unlawful killing of the enemy. Thus, they must turn to the judge advocate for advice concerning the domestic and international legal proscriptions against assassination.

Executive Order 12.333 states that "[n]o person employed by or acting on behalf of the United States Government shall engage in, or conspire to engage in, assassination."²⁸ Article 23b of the Hague Regulations of 1907 essentially prohibits assassination in wartime by outlawing the "treacherous wounding or killing" of the enemy.²⁹

Although no definition of assassination exists that is sufficiently precise to provide definitive guidance to special-operations planners or operators, Department of Army guidance states that Article 23b does not prohibit an attack on individual soldiers or officers of the enemy, wherever they may be located.³⁰

Through law-of-war training, the judge advocate must emphasize to SOF soldiers that combatants are subject to attack at any time or place, regardless of their activity when attacked. An individual combatant can be targeted lawfully whether he or she is directly involved in hostilities, providing logistical support or acting as a staff planner.

As an illustration of this point, the judge advocate may refer to an excellent World War II historical example. A British commando party conducted a raid on the headquarters of Field Marshall Irwin Rommel's African Army at Beda Littoria, Libya, in 1943. The operation was carried out by military personnel in uniform, and the



Photo by Ron Davidson

Combined exercises such as this one between U.S. and Canadian forces provide excellent opportunities for training but present questions on jurisdictional status of U.S. forces as well.

objective was the seizure of Rommel's operational headquarters, including his own residence, and the capture or killing of enemy soldiers therein.³¹ The British Manual of Military Law cites this operation as an attempt to kill a specific enemy that complies with Article 23b of the Hague Regulations.³²

Reviewing operations plans

The judge advocate in a special-operations unit must review each of the operations, contingency and exercise plans affecting his unit. As many of these plans will call for the unit to support a larger conventional operation, the judge advocate must understand the tasks of the special-operations unit.

If the unit has already developed a plan to support that of the higher headquarters, the judge advocate should review this plan for compliance with the law of war, United States law, national policy, Department of Defense directives and Army regulations. If the unit is in the process of developing a sup-

porting plan, the judge advocate should become a part of this process. He must convey to the operations officer that the provision of legal input as the plan is being developed is much more effective and less time-consuming than a belated review of the completed product.

The judge advocate must review all aspects of the operation. A review that extends only to the "mission" and "execution" paragraphs of the plan will very likely fail to analyze a myriad of legal issues contained in a number of other paragraphs and annexes to the plan. For example, the medical annex to an exercise plan may not address the legal issue of introducing narcotic medications into an allied country.

Experience indicates that the best tool available to assist the judge advocate in conducting an exhaustive review of these plans is the "OPLAN Checklist," published by the International Law Division of The Judge Advocate General's School. This checklist, developed by

the Headquarters Marine Corps Law of War Reserve Augmentation Unit, follows the format of the Joint Operations Planning System.

Unique SOF legal issues

Special-operations forces train extensively for their wartime missions by exercising with host-country armed forces overseas. Army SOF conducted 33 combined exercises at the direction of the Joint Chiefs of Staff during FY 88.³³ SOF also participated in an additional 25 combined exercises during this same period.³⁴ These combined exercises afford SOF an excellent opportunity to train in the regions of the world to which they are slated to deploy in "real world" situations.

The judge advocate must be aware of the legal issues presented by exercises. Perhaps the most important of these issues is the jurisdictional status of U.S. forces training in a host country. A peacetime stationing arrangement may exist between the U.S. and host country that establishes this jurisdictional status. If there is no such agreement, however, the judge advocate must take the necessary steps to secure one. He must first determine who within the appropriate unified command has been delegated the authority to negotiate international agreements.³⁵ In making this determination, the judge advocate should first contact the unified command's legal adviser.

After determining the negotiating authority for the unified command, the judge advocate must request, through command channels, that this authority conclude an agreement setting forth the jurisdictional status of U.S. forces within the host country. If possible, the negotiating official should seek some form of diplomatic immunity for U.S. forces. Though the host nation may not extend complete criminal and civil immunity to the deploying SOF personnel, it may agree to grant these soldiers the same privileges and immunities accorded the

administrative and technical staff of the U.S. embassy.³⁶

If the host nation does not consent to this type of diplomatic immunity, the negotiating official should attempt to obtain a foreign-criminal-jurisdiction arrangement similar to that contained in the NATO Status of Forces Agreement.³⁷ This type of arrangement will provide at least some jurisdictional protection and procedural safeguards for the deploying special-operations forces.

The agreement with the host nation should also address a number of other relevant issues, includ-

"The judge advocate must also review all proposed training, construction, and humanitarian assistance and civic-action activities that are to occur during the course of the exercise, in order to ensure that these activities comply with existing statutory and regulatory requirements."

ing entry and exit requirements; customs and taxes; environmental laws; the security of U.S. forces; and logistical support to be provided by the host nation.

The judge advocate must also review all proposed training, construction, and humanitarian assistance and civic-action activities that are to occur during the course of the exercise, in order to ensure that these activities comply with existing statutory and regulatory requirements. Legislation exists that provides DoD with greater flexibility in conducting such activities during combined exercises,³⁸ but particular care must be taken

to differentiate carefully between legitimate exercise-related activities and activities that are more properly conducted under security-assistance programs. Only by attending all exercise-planning sessions can the judge advocate ensure that all exercise activities remain within the scope of U.S. law.

Security-assistance missions

SOF, particularly Special Forces, often are tasked to send mobile training teams overseas to conduct security-assistance training. The judge advocate must review the proposed mission in order to ensure that the jurisdictional status of the team members has been addressed.

Typically, the mission will be conducted as a foreign-military-sales case under the Arms Export Control Act.³⁹ The Foreign Military Sales Letter of Offer and Acceptance should spell out the status of the team members while they are in the host country.

Mobile-training-team members will probably be accorded the same privileges and immunities that are provided to the administrative and technical staff of the U.S. embassy. The judge advocate should therefore refer to the operative bilateral agreement between the U.S. and the host nation in order to determine the extent of these privileges. If the Letter of Offer and Acceptance does not address the jurisdictional status of U.S. forces, the judge advocate should contact the Security Assistance Training Management Office at Fort Bragg, N.C., or the Security Assistance Training Field Agency at Fort Monroe, Va., for assistance.

While the mobile training team is in the host country, it will operate under the control of the unified command responsible for that area of the world. The commander-in-chief of the unified command exercises control through the U.S. military mission in the host country. Nevertheless, the team may operate in a field environment far removed from the U.S. embassy or

consulate. The team members must therefore be aware of the sensitive and visible nature of their mission. For this reason, the judge advocate should thoroughly brief the mobile training team concerning the laws and customs of the country to which they will deploy. This briefing takes on particular importance if team members have not previously deployed to this country.

The mobile training team may deploy to a country experiencing low-intensity conflict. In this situation, team members must be advised of the Arms Export Control Act prohibition against engaging in combat-related activities.⁴⁰

Targeting

Strike operations are among the special-operations wartime missions. As a result, SOF may be required to attack tactical or strategic targets. These missions are normally developed through a formal procedure by which a unified command provides a target folder to the special-operations unit. The unit then analyzes the target and prepares a plan of execution, returning the plan to the unified command or forwarding it to a higher command for approval.

The special-operations unit's targeting committee requires the assistance of a legal adviser in developing the target folder to ensure that the plan complies with both domestic and international law. While the plan likely will have

received a legal review at the unified command, much time can be saved by having a judge advocate involved in the formulation of the plan at the special-operations-unit level. Thus, the judge advocate must be an active member of his unit's targeting committee.

Civil Affairs

Civil Affairs units support both conventional and special-operations units.⁴¹ These Civil Affairs assets provide the commander with advice and assistance concerning civil-military operations. Civil affairs are especially critical to those special operations that depend on the support of the local populace for their success, such as foreign-internal-defense and unconventional-warfare operations.

The judge advocate should contact the Civil Affairs units that support his special-operations unit for each operation and exercise plan. He should then determine how the Civil Affairs units plan to support his unit and whether these units have their own legal staff. Regardless of whether the Civil Affairs units possess in-house legal assets, the special-operations judge advocate must be prepared to advise his commander on the legal aspects of civil affairs.

Conclusion

Special operations are politically sensitive, particularly in a peacetime or low-intensity-conflict envi-

ronment, and this area is fraught with potential legal pitfalls. DoD policy calls for the special-operations legal adviser to provide the legal advice necessary for the commander to avoid these pitfalls. Failure to address these issues can jeopardize U.S. relations with an ally or result in a loss of public and congressional support for a program vital to U.S. national-security interests. ✕

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Notes

¹ Dept. of Army, Field Manual 100-20, *Military Operations in Low-Intensity Conflict* (Coordinating Draft), p. 1-12 (Jan. 1988).

² Swain, "Removing Square Pegs from Round Holes: Low-Intensity Conflict in Army Doctrine," *Military Review*, December 1987, p. 13.

³ Sarkesian, "The Myth of U.S. Capability in Unconventional Conflicts," *Military Review*, September 1988, p. 12.

⁴ The Office of the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict, known as ASD-SO/LIC, was established by Congress through the Goldwater-Nichols Department of Defense Reorganization Act of 1986, 10 U.S.C. § 136(b)(4) (Supp. V 1987). The ASD-SO/LIC is the principal civilian adviser to the Secretary of Defense on special operations and low-intensity-conflict matters.

⁵ The formation of the United States Special Operations Command, established April 16, 1987, was directed by an amendment to the Goldwater-Nichols Act. The original bill directed a study to determine the need for such a command. A later rider on the Continuing Appropriations Act for Fiscal Year 1987, Public Law No. 99-591, directed that the command be established. The command's principal function is to prepare special-operations forces to carry out assigned missions. All active and reserve special-operations forces of the

armed forces stationed in the United States are assigned to USSOCOM. The command is located at MacDill Air Force Base, Fla., and is commanded by Gen. James J. Lindsay.

⁶ This support to resistance forces would be in the context of an international armed conflict. The support of rebel forces in an insurgency, or an internal armed conflict, is viewed by many international legal scholars as illegal intervention in the internal affairs of another state. See generally, Vincent, *Nonintervention and International Order*, pp. 281-326 (1974).

⁷ Joint Chiefs of Staff Publication No. 1, *Dictionary of Military and Associated Terms*, p. 339 (1 June 1987).

⁸ The commander-in-chief of the unified combatant command in whose geographic area the activity or mission is to be conducted will exercise command over the mission. Nevertheless, the President or the Secretary of Defense may direct that the CINC of the U.S. Special Operations Command exercise command of a selected special-operations mission. 10 U.S.C. §167(d) (Supp. V 1987).

⁹ TRADOC Pamphlet 525-34, p. 3.

¹⁰ Id., p. 4.

¹¹ Id., p. 5.

¹² Letter, HQ, Dept. of Army 525-86-1, subject: DA Policy on Special

Operations, 10 July 1986. While this letter expired on 10 July 1988, it continues to reflect Army policy.

¹³ Id.

¹⁴ Id.

¹⁵ Memorandum for the Joint Chiefs of Staff 59-83, subject: Implementation of the DoD Law of War Program, 1 June 1983. This memorandum also requires that legal advisers be immediately available to provide advice concerning law-of-armed-conflict compliance during joint and combined operations and to review all plans, rules of engagement, directives and other joint documents.

¹⁶ Message, Forces Command, 291400Z Oct. 84, subject: SJA Review of Operations Plans. This message also requires operational-law advisers to make direct liaison with the operations officers of FORSCOM units and to be available to participate in all exercises. The operational-law adviser is to be considered as a member of the operations team.

¹⁷ DA Policy Letter.

¹⁸ Id.

¹⁹ Convention Respecting the Laws and Customs of War on Land, Oct. 18, 1907, Annex, 36 Stat. 2277, T.S. No. 939, reprinted in Department of Army, Pamphlet 27-1, *Treaties Governing Land Warfare*, p. 5 (December 1956).

²⁰ H. Lauterpacht, *Oppenheim's International Law*, p. 429 (7th ed. 1952).

²¹ T. Lawrence, *The Principles of International Law*, p. 445 (1895). The rule is generally accepted that "troops may be clothed in the uniform of the enemy in order to creep unrecognized or unmolested into his position, but during the actual conflict they must wear some distinctive badge to mark them off from the soldiers they assault." Id.

²² Dept. of Army, Field Manual 27-10, *The Law of Land Warfare*, Para. 74 (July 1956) states:

"Members of the armed forces of a party to the conflict ... lose their right to be treated as prisoners of war whenever they deliberately conceal their status in order to pass behind the military lines of the enemy for the purpose of gathering military information or for the purpose of waging war by destruction of life or property. Putting on civilian clothes or the uniform of the enemy are examples of concealment of the status of a member of the armed forces."

²³ Id., Para. 54.

²⁴ Protocol Additional to the Geneva Conventions of 12 August 1949, and Relating to the Protection of Victims of International Armed Conflicts, opened for signature 12 December 1977, reprinted in 16 I.L.M. 1391 (1977) [hereinafter Protocol I]. Article 39 prohibits the "use of the flags or military emblems, insignia or uniforms of adverse Parties while engaging in attacks or in order to shield, favour, protect or impede military operations." Though the United States has determined that it will not ratify Protocol I (see Letter of Transmittal from President Ronald Reagan to the Senate of the United States [29 January 1987]), and does not endorse Article 39 as customary international law, this provision nevertheless illustrates the fact that U.S. personnel who are captured wearing the uniform of the enemy may well be denied prisoner-of-war status.

²⁵ Geneva Convention Relative to the Treatment of Prisoners of War, opened for signature 12 August 1949, 6 U.S.T. 3316, Art. 13, prohibits any unlawful act causing death of a prisoner.

²⁶ FM 27-10, Para. 85, states:

"A commander may not put his prisoners to death because their presence retards his movements or diminishes his power of resistance by necessitating a large guard, or by reason of their consuming supplies, or because it appears certain that they will regain their liberty through the impending success of their forces. It is likewise unlawful for a commander to kill his prisoners on grounds of self-preservation, even in the case of airborne or commando operations, although the circumstances of the operation may make necessary rigorous supervision of and restraint upon the movement of prisoners of war."

²⁷ G. Dickey, *Treatment of Prisoners of War*, p. 3 (11 September 1984) (unpublished staff study).

²⁸ Exec. Order No. 12,333, §2.11, 3 C.F.R. 200, 213 (1982), reprinted in 50 U.S.C. app. §401, pp. 44, 50 (1982).

²⁹ Hague Regulations of 1907. Article 23b states that it is forbidden to "kill or wound treacherously individuals belonging to the hostile nation or army."

³⁰ FM 27-10, Para. 31, construes Article 23b of the Hague Regulations as prohibiting assassination but not "attacks on individual soldiers or officers of the enemy whether in the zone of hostilities, occupied territory, or elsewhere."

³¹ J. Ladd, *Commandos and Rangers of World War II*, p. 120 (1978). The mission was unsuccessful. The raiding force infiltrated some 125 miles from the coast of Libya in miserably wet weather, only to attack the wrong target. The headquarters turned out to be a supply troops' center, and Rommel, as far as it is known, had never visited it. Very few of the 53-man raiding force were able to escape and evade back to allied lines. The commander of the force was posthumously awarded the Victoria Cross.

³² *Manual of Military Law*, Part III, §15 n.2 (1958).

³³ Telephone interview with John Knabb, Exercise Division, G-3, 1st Special Operations Command (31 May 1989).

³⁴ Id.

³⁵ The Chairman of the Joint Chiefs of Staff has the authority to negotiate and conclude international agreements, pursuant to Dept. of Defense Directive 5530.3, International Agreements (11 June 1987). The Chairman of the Joint Chiefs of Staff has further delegated this authority to the commanders-in-chief of the unified commands.

³⁶ Under Article 37(2) of the Vienna Convention on Diplomatic Relations (22 U.S.T. 3227; T.I.A.S. 7502; 500 U.N.T.S. 95), members of the administrative and technical staff of an embassy are entitled to complete criminal immunity and civil immunity for those acts committed in an official capacity.

³⁷ See generally, Agreement Between the Parties to the North Atlantic Treaty Regarding the Status of Forces, June 19, 1951, Art. VII, 4 U.S.T. 1792; T.I.A.S. 2846; 199 U.N.T.S. 67.

³⁸ For discussion of the legislation relating to combined exercises, see, International Law Division, The Judge Advocate General's School, U.S. Army, *The Operational Law Handbook*, Chap. 3, Sec. III C (February 1989).

³⁹ 22 U.S.C. §2751-2796c (Supp. V 1987).

⁴⁰ Section 21(c)(1) of the Arms Export Control Act prohibits U.S. personnel from performing any duties of a combatant nature, including duties related to training and advising, that may result in their becoming involved in combat activities.

⁴¹ TRADOC Pam. 525-34, Para. 6-3.

Terrorism, the Law and the National Defense

by Abraham D. Sofaer

Editor's note: This is the text of the sixth annual Waldemar A. Solf Lecture in International Law, which Judge Sofaer presented at the Army's Judge Advocate General's School May 4, 1989. For its assistance in obtaining the final manuscript, Special Warfare is grateful to Military Legal Review, which also published this article in its Fall 1989 issue.

This distinguished institution, our profession, and our society are deeply committed to the rule of law.

To us, law is the vehicle for assur-

ing order and fairness in human relations. Law is congenial to freedom, to tolerance and to a process of reasoned debate and democratic choice.

To us, terrorism is the antithesis of law, the substitution of coercion for persuasion and choice. Law, we believe, is a proper means for controlling terrorist conduct. And we are committed, in pursuing the fight against terrorism, to act lawfully, to avoid sacrificing those values of which terrorists seek to deprive us.

Our faith in law stems from our good experience with it. Not all law is good law, however. The law is fre-

quently used by totalitarian regimes as an instrument of terror and evil. The law can be used by terrorists as well, and by their supporters, as a means for undercutting the capacity of free nations to act against them. Terrorists have no respect for law and no commitment to accept the rules of any legal system. But they know the value of having the law on their side, and they have battled to influence the international legal system in their favor. A contest has been under way since the 1960s over the values that international law should serve, and particularly the extent to which the law will protect and otherwise serve the use of violence for political ends.

The law's application to terrorist incidents led me to write in 1986 that international law is too often used to serve terrorists and their objectives.¹ Some progress has been made since that time in reducing the extent to which international law tends to protect political violence.²

Important progress has been made, moreover, in developing a more effective international system of criminal justice to deal with terrorism and other international crimes. During the last few years, several international terrorists have been arrested, tried and punished for their crimes.³

These developments have at most only marginally reduced the effects of state-sponsored terrorism. Devastating tragedies, such as the destruction of Pan Am 103, are well within the capacity of state-sponsored terrorists to achieve. To deal effectively with state-sponsored terrorism requires treating its proponents not merely as criminals, but as a threat to our national security. This is, in fact, the deliberate policy of the United States, implemented by measures in the Carter and Reagan administrations and supported by the Task Force on Combatting Terrorism chaired by then-Vice President George Bush.⁴

The law has played — and must continue to play — an important

role in marking the limits and conditions on measures used to protect our national security against state-sponsored terror. Many proposed military actions were considered and rejected during recent years on legal grounds. That must and will continue to occur. But the law must not be allowed improperly to interfere with legitimate national-security measures. In important respects, it is doing so today. My purpose here is to review areas in which unwarranted limitations are being imposed on counter-terrorist actions, under both international law and U.S. domestic law, and to explain some of the dangers such limitations may pose.

In the realm of international law, several legal concepts have been invoked that would impose serious limits on strategic flexibility. The most significant of these is the narrow view of self-defense recently espoused by the International Court of Justice, the ICJ, in *Nicaragua v. United States*.⁵ Narrow views of self-defense give terrorists and their state sponsors substantial advantages in their war against the democracies.

Domestic law has also created problems for the United States in combatting state-sponsored terrorism. Congress has adopted laws that enhance the authority and capacity of U.S. officials in dealing with terrorism through criminal law enforcement.⁶ In the area of national defense, however, while Congress has supplied the military means for countering terrorists and their sponsors, the War Powers Resolution has a potentially detrimental impact on the nation's capacity to act effectively. The executive branch has also established rules that, to the extent they are not properly understood or applied, have a detrimental effect on the nation's capacity to combat state-sponsored terror. The executive order prohibiting assassination, in particular, has created generalized uncertainty about the legality of using lethal force.

To the extent these limitations are not in fact mandated by the U.N. Charter, customary principles of international law, or the U.S. Constitution, they are indefensible. State-sponsored terrorism poses a threat to our national security, to which the United States must respond effectively. To succeed in this effort, our nation's policy planners and military strategists are entitled to as much flexibility as possible in combatting an enemy that accepts no limits based on law, but only those imposed by an effective defense.

As lawyers, we have a special

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responsibility to identify and to revise or reject unjustifiable legal restrictions on our nation's capacity to protect its security. The president and other national-security leaders will naturally regard any use of force with great caution, and good judgment may counsel against some such actions even where the law allows them. But the law should not be distorted or manipulated to dictate restraints in circumstances where judgment is the proper measure.

The use of force

Terrorists and their supporters seek to have their way and to harm

their enemies by using force against them. Under the domestic law of any state, the unauthorized use of force is subject to control and punishment. Our counterterrorism policy relies in the first instance on the enforcement of our own laws and on the willingness of other states to enforce their laws against terrorist conduct. International conventions condemning a variety of acts widely recognized as crimes call for states to utilize their criminal law to prosecute violators or to extradite them. Considerable progress has been made in recent years in dealing with terrorism through international cooperation. We have also used our authority under international law to arrest terrorists in international territory, where legal problems concerning the territorial sovereignty of other states are avoided. And we invariably resort to economic and diplomatic sanctions before using force in our self-defense.

Several states, however, instead of enforcing their domestic law against or extraditing terrorists, protect, train, support or utilize terrorist groups to advance policies they favor. Some states, such as Lebanon, are simply unable to exercise authority over terrorists, even if they were inclined to do so. The United States must be free to utilize force with sufficient flexibility to defend itself and its allies effectively against threats resulting from such breaches of international responsibility. As Secretary of State George P. Shultz predicted in 1984: "We can expect more terrorism directed at our strategic interests around the world in the years ahead. To combat it, we must be willing to use military force."⁷

The use of force is governed in international law by the U.N. Charter, which in Article 2(4) obligates all members "to refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state." The charter expressly provides, howev-

er, in Article 51, that "[n]othing in the present Charter shall impair the inherent right of individual or collective self-defense if an armed attack occurs against a Member of the United Nations, until the Security Council has taken measures necessary to maintain international peace and security."

The United States has always assumed that these charter provisions, and the understandings and customary practice that help define their meaning, provide a workable set of rules to deal with the array of needs that potentially require the use of force, including such threats as state-supported terrorism and insurgencies. General Assembly interpretive declarations make it clear that "force" means physical violence, not other forms of coercion. But they also indicate that aggression includes both direct and indirect complicity in all forms of violence, not just conventional hostilities.⁸ The United States has long assumed that the inherent right of self-defense potentially applies against any illegal use of force, and that it extends to any group or state that can properly be regarded as responsible for such activities.

These assumptions are supported in customary practice.⁹ A substantial body of authority exists, however, which advocates positions that, if adhered to by the U.S., would largely undermine this or any other nation's capacity to defend itself against state-sponsored terrorism. The principal limitations proposed in these sources are: a) an unrealistically limited view of the meaning of "armed attack"; b) artificially restrictive views of necessity and proportionality; c) restrictions on the situations in which terrorist groups or states can be held responsible for terrorist actions; and d) absolute deference to the principle of territorial integrity.

Armed attack

Article 51 preserves the right to self-defense "if an armed attack occurs against a Member." This lan-

guage suggests to some writers that force can be used in self-defense only to defend against an armed attack that occurs "against [the territory of] a Member." Proponents of this restrictive view of self-defense would greatly limit the extent to which force can lawfully be used to prevent or to deter future attacks and to defend against attacks upon the citizens or property of a member, outside its territory, that cannot be said to threaten its "territorial integrity or political independence."

A disturbing instance of this reasoning is found in the ICJ's decision

"State-sponsored terrorism and other methods by which states can act through surrogates enable states to bring about attacks on their enemies with a much higher possibility of evading responsibility (and legitimate retaliation) than if they undertook the attacks themselves."

in *Nicaragua v. United States*. The ICJ declined to find that Nicaragua had engaged in "aggression," although the court either found or assumed that Nicaragua had supplied arms to the rebels in El Salvador for several years.¹⁰ The court concluded that a limited intervention of this sort cannot justify resort to self-defense, because customary law only allows the use of force in self-defense against an "armed attack," and an armed attack does not include "assistance to rebels in the form of the provision of weapons or logistical or other support."¹¹ This ruling is without support in customary inter-

national law or the practice of nations, which could not be read to deprive a state of the right to defend itself against so serious a form of aggression. Recognizing this, the ICJ came up with the following solution: a state is not permitted to resort to "self-defense" against aggression short of armed attack, but it may be able to take what the court called "proportionate countermeasures."¹² While a state that is the victim of a terrorist attack based on such support by another state may seek to resort to "countermeasures," the fact that the court refused to treat such support as a basis for *self-defense* erroneously suggests it is necessarily a less serious form of aggression than a conventional attack, and thus a less legitimate basis for the defensive use of force.

The United States rejects the notion that the U.N. Charter supercedes customary international law on the right of self-defense. Article 51 characterizes that right as "inherent" in order to prevent its limitation based on any provision in the charter. We have always construed the phrase "armed attack" in a reasonable manner, consistent with a customary practice that enables any state effectively to protect itself and its citizens from every illegal use of force aimed at the state. Professor Oscar Schachter, among other prominent scholars, supports the view that attacks on a state's citizens in foreign countries can sometimes properly be regarded as armed attacks under the charter.¹³

Furthermore, the law concerning the use of force should not be manipulated by lawyers or judges to reflect their inexpert premises or outright bias as to the relative danger or desirability of particular forms of aggression. State-sponsored terrorism and other methods by which states can act through surrogates enable states to bring about attacks on their enemies with a much higher possibility of evading responsibility (and legitimate

retaliation) than if they undertook the attacks themselves. These attacks can be extremely serious, moreover, even though they occur in territory other than that of the state whose citizens are attacked, and they have become a substantial threat to the national security of the United States and other nations. In the last 20 years, the annual number of terrorist incidents has increased four-fold, and the number of injuries to U.S. citizens has increased even more dramatically. In 1968 terrorists inflicted 15 U.S. casualties; in 1988, 232 U.S. citizens were injured or killed during terrorist attacks.¹⁴

A sound construction of Article 51 would allow any state, once a terrorist attack occurs or is about to occur, to use force against those responsible for the attack in order to prevent the attack or to deter further attacks unless reasonable ground exists to believe that no further attack will be undertaken. In 1984 Secretary of State George Shultz described this policy as an "active defense." "From a practical standpoint," he said, "a purely passive defense does not provide enough of a deterrent to terrorism and the states that sponsor it."¹⁵ Later that year he described why an active defense was needed:

We must reach a consensus in this country that our responses should go beyond passive defense to consider means of active prevention, preemption, and retaliation. Our goal must be to prevent and deter future terrorist acts, and experience has taught us over the years that one of the best deterrents to terrorism is the certainty that swift and sure measures will be taken against those who engage in it. We should take steps toward carrying out such measures. There should be no moral confusion on this issue. Our aim is not to seek revenge but to put an end to violent attacks against innocent people, to make the world a safer place to live for all of us. Clearly

*the democracies have a moral right, indeed a duty, to defend themselves.*¹⁶

Deterrence is a key principle under the charter. A view of the meaning of "armed attack" that restricts it to conventional, ongoing uses of force on the territory of the victim state would as a practical matter immunize those who attack sporadically or on foreign territory, even though they can be counted on to attack specific states repeatedly.

The notion that self-defense relates only to a use of force that materially threatens a state's "territorial integrity or political independence," as proscribed in Article 2(4), ignores the charter's preservation of the "inherent" scope of that right. Nations – including the U.S. – have traditionally defended their military personnel, citizens, commerce and property from attacks even when no threat existed to their territory or independence. The military facilities, vessels and embassies of a nation have long been considered its property, and for some purposes its territory.

Attacks on a nation's citizens cannot routinely be treated as attacks on the nation itself; but where an American is attacked because he is American, in order to punish the U.S. or to coerce the U.S. into accepting a political position, the attack is one in which the U.S. has a sufficient interest to justify extending its protection through necessary and proportionate actions. No nation should be limited to using force to protect its citizens, from attacks based on their citizenship, to situations in which they are within its boundaries.

Necessity and proportionality

The U.S. is committed to using force in its self-defense only when necessary, and only to the extent it is proportionate to the threat defended against. Our uses of force during the Reagan Administration met these tests. In fact, military planners were not infrequently accused of having too greatly limit-

ed our actions, particularly against Iran in the Persian Gulf.

Writers seeking to impose the strictest possible limits on self-defense, who generally claim for purposes of defining self-defense that customary law has been superseded, nonetheless turn to precedents in customary law for definitions of necessity and proportionality. Particularly popular is Secretary of State Daniel Webster's description of anticipatory self-defense in *The Caroline* dispute. A state, he wrote, must demonstrate a "necessity for self-defense, instant, overwhelming, leaving no choice of means, and no moment for deliberation" and must do "nothing unreasonable or excessive; since the act, justified by the necessity of self-defense, must be limited by that necessity, and kept clearly within it."¹⁷

This statement exaggerates the test of necessity in a situation where that issue was dicta. More fundamentally, moreover, the *Caroline* test was applied when war was still a permissible option for states that had actually been attacked. Webster's statement therefore related, in that context, to situations in which no prior attack or other act of war had occurred.

An unrealistically strict view of necessity and proportionality was most recently advanced by the ICJ in *Nicaragua v. United States*. The court held that, because certain American actions were taken "several months after the major offensive of the armed opposition against the Government of El Salvador had been completely repulsed," the measures were unnecessary, and it was possible to "eliminate the main danger of the Salvadoran Government without the United States embarking on activities in and against Nicaragua."

As to proportionality, the court said it could not regard the actions relating to the mining of Nicaraguan ports and attacks on port and oil installations as satisfying proportionality, and that United States help to the *contras* persisted too

long after any aggression by Nicaragua could have reasonably been presumed to have continued.¹⁸

Judge Schwebel detailed in his opinion the depredations in which the insurgents in El Salvador had engaged, which were very similar to those that the United States allegedly supported. He explained that an action is proportional when it is necessary to end and to repulse an attack, not just when it corresponds exactly to the acts of aggression.¹⁹ Mining of the harbors and attacks on oil installations could have been expected to restrict the flow of arms from Nicaragua's harbors and therefore to diminish Nicaragua's capacity to continue its aggression.

Most significantly, the court cannot safely impose a standard on states that requires them to abstain from the exercise of self-defense on the assumption that no new offensive will be undertaken by an aggressor who retains the capacity to attack or to support an attack. Courts must leave such delicate and dangerous predictions within the reasonable discretion of individuals assigned the responsibility for protecting their nationals. Sound military strategy must govern such tactical decisions, not retrospective second-guessing of judges.

The limitations of necessity and proportionality are traditional, civilizing constraints on the use of force. Respect for such traditional doctrine is undermined, however, when states are expected to accept too high a degree of risk of substantial injury before being allowed to defend themselves or to accept a continuation of unlawful aggression because of a tit-for-tat limit on military response. The law should not be construed to prevent military planners from implementing measures they reasonably consider necessary to prevent unlawful attacks.

Responsibility for aggression

The exercise of self-defense must be based on adequate proof of responsibility. This obvious principle creates no serious problem in con-

nection with conventional uses of force. States generally act openly in using force against each other, or they utilize their own secret services for undercover work. In those situations, responsibility is clear in principle, though proof of responsibility for undercover work may be difficult to obtain. Establishing responsibility for acts of state-supported terrorism is far more difficult.

Placing responsibility for acts of terrorism is more than merely a problem of proof. Controversy and uncertainty exist as to the extent to which states that protect or support terrorist groups can legally be held responsible for the acts of such groups. Furthermore, terrorist groups commonly seek to avoid responsibility for the acts of their members. Developing appropriate rules to govern these issues is a matter of grave importance and sensitivity. The most dangerous terrorists are those from established groups that are secretly utilized by states. States have the resources to provide such groups with the training, equipment, support and instructions that enable them to inflict far greater damage than would be possible by independent agents.

Terrorist groups often try to avoid being identified as the perpetrators of acts that they believe might result in their being held accountable. Frequently, phony claims of responsibility will be issued to attempt to divert suspicion and scrutiny from the true perpetrators, who will deny having been responsible. Some groups will operate in a manner that makes the assignment of responsibility to a particular organization especially difficult. Abu Nidal is said to work with extremely small cells, each composed of individuals who know nothing about the others or of the central command. The Palestine Liberation Organization operates through an organization that enables its political arm to claim a lack of responsibility for the actions of its military arm (including their terrorist operations). Established groups residing

in a particular country, such as the Popular Front for the Liberation of Palestine, the PFLP, in Syria, have attempted to disclaim responsibility for the actions in other countries of their individual members by asserting that those specific acts were unauthorized.

Some have suggested that an organization such as the PLO should be permitted to disclaim responsibility for the acknowledged actions of groups within its overall structure. This standard is inconsistent, however, with the law of criminal responsibility in the United States. The general rule followed in the state and federal courts is that a person is guilty of a crime, not only when he or she commits it, but also when he or she does or omits something for the purpose of aiding another person to commit it or abets in any way its commission, such as providing the means, training, facilities or information that may assist in or facilitate commission of the proscribed acts.²⁰ A corporation or group is responsible for the acts of its authorized agents,²¹ and the concept of apparent authority requires that principals exercise reasonable care to prevent any action that could reasonably lead a third person to infer that an agent has actual authority to engage in the conduct at issue.²²

These rules in fact reflect the governing law throughout the world's legal systems. As Professor Tom Franck concluded on the basis of an extensive survey, "the approach to criminal complicity is strikingly similar among all legal systems. The domestic law of all civilized states [has] recognized that persons who aid or abet other persons are guilty of the (or another) offense."²³ The widespread acceptance of these rules is significant in determining proper international behavior. Where domestic laws constitute "general principles of law recognized by civilized nations," they become a source of international law, as defined in

Article 38 of the Statute of the ICJ. Principles recognized by civilized nations have been relied on by the ICJ in formulating international law in several cases.²⁴

Two relatively recent actions signal our increasing impatience with the claim that an organization can successfully disclaim responsibility for the acknowledged actions of individuals or groups within its overall structure. Congress, in the Anti-Terrorism Act of 1987, found that the PLO is a terrorist organization, based on acts undertaken by terrorist components of the organization.²⁵

This finding implicitly rejected the notion that the PLO Council and its principal political body, Fatah, could avoid responsibility for the actions of the likes of Abu Abbas, a council member, and the group that he directs (the Palestine Liberation Army). In 1988, moreover, Secretary Shultz denied a visa application to PLO leader Yassir Arafat on the ground that he should be held personally responsible for the terrorist activities of a group within the PLO that serves as Arafat's security force.²⁶ This action called an end to a long indulgence of Arafat's two-faced positions. Further, it may well have played a part in leading the PLO leader to make the declaration concerning terrorism that enabled the U.S. to enter into a dialogue with the PLO to help bring peace for Israel and justice for the Palestinians.

The U.S. should apply to terrorist organizations the same standards of responsibility that are applied in any legal system that deals with such issues. In terms of criminal law enforcement, prosecutors have made a strong case for applying to terrorist groups statutes which make it a separate crime to commit certain acts through a conspiracy or through the use of techniques associated with racketeering organizations.²⁷ In protecting our national security the test should be no more exacting.

States that sponsor terrorism have an even greater capacity to evade responsibility than the terror-

ist groups they support. First, they attempt to keep secret the training and assistance they extend. A particularly useful arrangement in this respect is the channeling by states of assistance to terrorist groups outside their borders. Secrecy is not a major concern, however, given the present widespread acceptance of the premise that states can do virtually anything short of ordering a terrorist act or participating in its execution and still avoid being treated as responsible.

For years states have supplied funds, arms and sanctuary to known terrorist organizations with-

"... the court cannot safely impose a standard on states that requires them to abstain from the exercise of self-defense on the assumption that no new offensive will be undertaken by an aggressor ... Sound military strategy must govern such tactical decisions, not retrospective second-guessing of judges."

out being treated as having responsibility for the terrorist actions. In such situations, states claim they have no knowledge of or do not support terrorist actions, and they explain their support for the groups involved on the ground that the groups have other, legitimate purposes. A claim currently made by states allowing terrorist groups sanctuary within their borders is that they have warned the groups not to commit terrorist acts and that they are prepared to punish or to expel any terrorist proved to be guilty of a terrorist act.²⁸

The ICJ has recently provided states that assist terrorist groups

with important support in their attempt to evade responsibility for the terrorist conduct of such groups in other states. In *Nicaragua v. United States* the court ruled that U.S. support for the *contras* was not extensive enough to make the U.S. responsible for the *contras'* actions in Nicaragua. (The U.S. was held responsible only for its own actions, such as the mining of the harbors.)

The extent of U.S. support for the *contras* found by the court was significant, however, and included financing for food and clothing, military training, arms and tactical assistance. The court concluded, nonetheless, that these forms of support were insufficient to hold the U.S. accountable, because the *contras* remained autonomous: "The Court does not consider that the assistance given by the United States to the *contras* warrants the conclusion that these forces are subject to the United States to such an extent that any acts they have committed are imputable to that state."²⁹

The United States at no time during the *Nicaragua* litigation advanced as a defense for its support for the *contras* the claim that it had no responsibility for their actions. Any U.S. support for the *contras* was based on the belief that such support is legitimate as a measure of collective self-defense in light of Nicaragua's support of communist revolutions in El Salvador, Honduras and eventually all of Central America.

The court's ruling in the litigation had the effect of relieving the U.S. of liability for *contra* activities and thereby limiting the effect of the court's ruling on liability. But the long-run consequences of this ruling will be as pernicious to peaceful relations among states as the court's rulings limiting the scope of self-defense. The rulings on self-defense will have the effect of restricting the effectiveness of responses to aggression and thereby will encourage aggression by reducing the deterrent capacity of

states. The ruling on state responsibility will have the effect of reducing the costs imposed on states for supporting aggression and for assisting groups they know intend to engage in unlawful acts.

Here, too, the court had no basis in established practice or custom to limit so drastically the responsibility of states for the foreseeable consequences of their support of groups engaged in illegal actions, whether the actions are called "armed resistance" or whether the perpetrators are called terrorists. Established principles of international law and many specific decisions and actions strongly support the principle that a state violates its duties under international law if it supports or even knowingly tolerates within its territory activities constituting aggression against another state.

As Judge Schwebel noted in his dissent in *Nicaragua*, the U.N. Definition of Aggression proscribes not only the "sending" of "armed bands, groups, irregulars, or mercenaries" to carry out "acts of armed force" but also any "substantial involvement therein." He pointed out that Nicaragua had been substantially involved in the acts of armed force by the Salvadoran insurgents.³⁰

Several decisions of arbitral tribunals have granted substantial damages against states for failing to prevent persons within their jurisdictions from conducting hostile activities against other states. The U.S. was awarded \$15,500,000 in a proceeding against Britain (*The Alabama*) for allowing a Confederate warship to be completed and to leave British territory, thereafter capturing or destroying more than 60 Union vessels.³¹ In the *Texas Cattle Claims* arbitration, the American-Mexican Claims Commission found Mexico liable on four legal bases for raids into Texas by outlaws or military personnel:

1. Active participation of Mexican officials in the depredations;
2. Permitting the use of Mexican territory as a base for wrongful

- actions against the United States and the citizens thereof, thus encouraging the wrongful acts;
3. Negligence, over a long period of years, to prosecute or otherwise to discourage or prevent the raids; and
4. Failure to cooperate with the government of the United States in the matter of terminating the condition in question.³²

The ICJ held Israel responsible in 1948 for failing to "render every assistance" to prevent the assassination of Prince Bernadotte, the U.N. mediator.³³ In the *Corfu Channel Case* as well as the *Iran*

"Our inability to justify actions in self-defense with public proof will inevitably and quite properly affect our willingness to resort to the most serious remedial options. But no formal requirement of public proof should govern our actions in such cases."

Hostage Case, the ICJ found that Albania and Iran, respectively, had a duty under international law to make every reasonable effort to prevent illegal acts against foreign states and had acted unlawfully by knowingly allowing their territory to be used for illegal acts.³⁴

The U.S. position on this issue has been stated in cases, by scholars, and in explanations for actions taken against states that support terrorists. The Supreme Court said in 1887, for example, in a case involving counterfeiting of Bolivian bank notes, that "[t]he law of nations requires every national government to use due diligence to pre-

vent a wrong being done within its own dominion to another nation with which it is at peace, or to the people thereof."³⁵

In a recent decision, involving the seizure by the U.S. of Fawaz Yunis in international waters, District Judge Barrington Parker commented on the international-law duty of states to prosecute or to extradite hijackers. He said that nations cannot be permitted to seize terrorists anywhere in the world in an unregulated manner. Governments must act in accordance with international law and domestic statutes. But he said that where a state, such as Lebanon, is "incapable or unwilling ... [to] enforce its obligations under the [Montreal] Convention," or when a government "harbors international terrorists or is unable to enforce international law, it is left to the world community to respond and prosecute the alleged terrorists."³⁶

The ultimate remedy for a state's knowingly harboring or assisting terrorists who attack another state or its citizens is self-defense. In December 1985, several airline passengers, including five Americans, were killed by terrorists in simultaneous attacks at the Rome and Vienna airports; many more were wounded. Some of the terrorists had in their possession Tunisian passports taken by Libyan authorities from Tunisian workers excluded from Libya. In addition, immediately after these attacks, in which 11-year-old Natasha Simpson and other civilians were killed, Khadafy of Libya publicly hailed the killers as "heroes."

These facts, together with Khadafy's record of activities and statements, led the U.S. to impose on Libya all remaining sanctions short of force and to make clear that Libya would be held responsible for the actions of terrorists whom it supported. President Reagan announced:

By providing material support to terrorist groups which attack U.S. citizens, Libya has engaged

*in armed aggression against the United States under established principles of international law, just as if he [Khadafy] had used its own armed forces. ... If these [economic and political] steps do not end Khadafy's terrorism, I promise you that further steps will be taken.*³⁷

In a speech at the National Defense University on Jan. 15, 1986, Secretary Shultz repeated the point:

*There should be no confusion about the status of nations that sponsor terrorism against Americans and American property. There is substantial legal authority for the view that a state which supports terrorist or subversive attacks against another state, or which supports or encourages terrorist planning and other activities within its own territory, is responsible for such attacks. Such conduct can amount to an ongoing armed aggression against the other state under international law.*³⁸

Despite these warnings, the U.S. learned in April 1986 that Libya was involved in two major terrorist incidents against Americans during that month and that Libya was in the process of planning others. In Paris, terrorists who were acting in part on Libya's behalf or with its support planned to attack persons lined up for visas at the U.S. embassy. The attack contemplated — with automatic rifles and grenades — would have resulted in substantial loss of life, but it was thwarted through excellent intelligence work by U.S. and French services.

Another attack was planned against a disco in Berlin that was frequented by U.S. military personnel. Efforts to thwart this attack were unsuccessful, and a bomb exploded in the disco April 5, 1986, killing at least one civilian and two U.S. servicemen and injuring some 50 others. Intelligence established Libya's culpability, as well as its plans for further attacks. This led to President Reagan's decision to bomb

terrorist-related targets in Libya.

The case for holding Libya responsible for the Berlin disco bombing and for a pattern of other prior and planned terrorist actions was very strong. Some particularly sensitive aspects of the case were made public, at a substantial price in terms of U.S. intelligence capabilities. The president decided in that instance, after public statements had already been made by other officials revealing a source of our information, that a degree of public disclosure was appropriate.

While members of the press and some others have raised questions about the sufficiency of the case against Libya, they did so largely on the ground that other evidence pointed to Syria as having been involved. In general, however, the case against Libya was accepted, and numerous states showed the seriousness with which they regarded this matter by cutting the staffs at Libya's embassies in their countries, thereby materially reducing Libya's capacity to assist terrorists and to engage in other illegal activities.

After Libya's overt actions in 1986, we should expect states that support terrorists to be more careful in their planning. When we learn, however, that any official, agency, or party in a state is materially involved in an incident, that should be treated as strong evidence of state responsibility. No requirement should be imposed that the head of state, for example, be shown to have personally approved an action or policy before a state is considered responsible.

Furthermore, even if no evidence is developed that a state is directly responsible for specific acts, the state's general and continuing support for a group known to be engaged in terrorism should suffice to establish responsibility for aiding or conspiring, if not as a principal in the crime itself. Differences in the degree of proof of actual approval by a state of specific terrorist acts should operate to vary

the degree of responsibility and the remedies imposed, rather than to permit a state to exploit the high standard of proof that should govern in determining the propriety of resorting to self-defense.

Finally, the case publicly made by the U.S. against Libya should not be regarded as the standard of proof for holding states responsible for supporting terrorist groups. The public revelation of sensitive information should not be considered a routine procedure to which the U.S. or other states are expected to adhere.

We will seldom be able to convince states to arbitrate issues as sensitive as their responsibility for terrorism. We will often be unable ourselves to litigate such issues because of limits on our willingness to reveal the sources and nature of evidence we obtain. We cannot, however, treat our national-security interests in such cases as though they are solely legal claims to be abandoned unless they can be proved in a real court or in the court of public opinion. Our inability to justify actions in self-defense with public proof will inevitably and quite properly affect our willingness to resort to the most serious remedial options. But no formal requirement of public proof should govern our actions in such cases.

Territorial integrity

The principle of territorial integrity is a major — and proper — legal constraint to taking actions against terrorists or states that support terrorism. World-class terrorists need bases in which to live and work, to train, to store their weapons, to make their bombs, and to hold hostages. The states in which they locate are almost invariably unable or unwilling to extradite them. An extradition request in such cases will do nothing more than reveal that we know their location, an advantage that would thereby be squandered. The only possible remedies against such terrorists often would require infringement of the territorial integrity of

the state in which they are located.

Breaches of territorial integrity are always serious. Control over territory is one of the most fundamental attributes of sovereignty. Law-enforcement or military personnel who participate in an operation that infringes this principle risk being treated as criminals, subject to severe penalties. On a political level, such actions are regarded by all states — even those who have failed to perform their duties under the law — as deeply offensive and threatening. In much of the world, interventions by the great powers, even for the purpose of upholding international law, are synonymous with imperialism.

Nonetheless, territorial integrity is not entitled to absolute deference in international law, and our national defense requires that we claim the right to act within the territory of other states in appropriate circumstances, however infrequently we may choose, for prudent reasons, to exercise it.

Territorial integrity is not the only principle of international law that deserves protection. All states are obliged to control persons within their borders to ensure that they do not utilize their territory as a base for criminal activity. Most states have also voluntarily undertaken to prosecute or to extradite persons for the most common terrorist crimes, such as air piracy and sabotage.³⁹

When states violate these obligations, and especially when they are implicated in the conduct of the terrorists involved, other states are seriously affected. These states are left in some cases with no option for ending the threat from such terrorists short of violating in some manner the territorial integrity of the state that has violated its own international responsibilities. Such violations often fall into one of three forms of action:

1. Hostage rescue — A state seeking to rescue its own citizens would appear to have an especially strong case for infringing the terri-

torial integrity of another, especially where its failure to act is likely to result in irreparable injury. This was the position taken by the United States and by many other states after Israel rescued its citizens at Entebbe, Uganda, from hijackers of an Air France jet forced to land there. In the action, three hostages, one Israeli soldier, seven terrorists and a number of Ugandan soldiers were killed. The hijackers had received the support of the Ugandan government, which made no effort to defuse the situation.

In response to complaints that Israel had conducted an "act of aggression," the United States and the United Kingdom supported a Security Council Resolution condemning hijacking and terrorism but also reaffirming the sovereignty and territory of all states. Ambassador William Scranton defended Israel's action, even though it involved a violation of Uganda's territorial integrity. He said:

Israel's action in rescuing the hostages necessarily involved a temporary breach of the territorial integrity of Uganda. Normally such a breach would be impermissible under the Charter of the United Nations. However, there is a well-established right to use limited force for the protection of one's own nationals from an imminent threat of injury or death in a situation where the state in whose territory they are located either is unwilling or unable to protect them. The right, flowing from the right of self-defense, is limited to such use of force as is necessary and appropriate to protect threatened nationals from injury. ...

It should be emphasized that this assessment of the legality of Israeli actions depends heavily on the unusual circumstances of this specific case. In particular, the evidence is strong that, given the attitude of the Ugandan authorities, cooperation with or reliance on them in rescuing the

*passengers and crew was impracticable.*⁴⁰

2. Attacks on terrorists and terrorist camps — The United States also supports the right of a state to strike terrorists within the territory of another state when the terrorists are using that territory as a location from which to launch attacks and when the state involved has failed to respond effectively to a demand that the attacks be stopped.

On Oct. 1, 1985, Israeli jets bombed the PLO headquarters in Tunis, asserting that it was being used to launch attacks on Israel and Israelis in other places. The United States denounced the bombing and abstained from voting on a Security Council resolution that, among other things, condemned "vigorously the act of armed aggression perpetrated by Israel against Tunisian territory in flagrant violation of the Charter of the United Nations, international law and norms of conduct."⁴¹

The United States opposed the Israeli action, however, on the basis of policy, not legal, considerations. The extent to which Israel had communicated its position in advance was unclear. The United States in fact supported the legality of a nation attacking a terrorist base from which attacks on its citizens are being launched, if the host country either is unwilling or unable to stop the terrorists from using its territory for that purpose. In abstaining on the resolution concerning the bombing of PLO headquarters, Ambassador Vernon Walters stated that the U.S. regarded such an attack as a proper measure of self-defense where it is necessary to prevent attacks launched from that base:

We, however, recognize and strongly support the principle that a state subjected to continuing terrorist attacks may respond with appropriate use of force to defend against further attacks. This is an aspect of the inherent right of self-defense recognized in the U.N. Charter. We

*support this principle regardless of attacker and regardless of victim. It is the collective responsibility of sovereign states to see that terrorism enjoys no sanctuary, no safe haven, and that those who practice it have no immunity from the responses their acts warrant. Moreover, it is the responsibility of each state to take appropriate steps to prevent persons or groups within its sovereign territory from perpetrating such acts.*⁴²

In contrast to an attack on a terrorist base in self-defense, the United States opposes peacetime attacks on a state's facilities on the mere possibility that they may someday be used against the attacking country. Thus, the U.S. supported a Security Council resolution condemning Israel's bombing in 1981 of a nuclear reactor in Iraq, in the absence of any evidence that Iraq had launched or was planning to launch an attack that could justify Israel's use of force and because Israel had not fully explored peaceful ways of alleviating its concerns.

A State Department spokesman stated that the United States "had no evidence that Iraq violated its commitment" under the Non-Proliferation Treaty to safeguard nuclear activities.⁴³ Ambassador Jeanne Kirkpatrick explained: "We believe the means Israel chose to quiet its fears about the purposes of Iraq's nuclear program have hurt, not helped the peace and security of the area. In my government's view, diplomatic means available to Israel had not been exhausted. ..." ⁴⁴

The violation of a state's territorial integrity must be based on self-defense. While Israel's anxiety concerning Iraq's intentions may have been reasonable, the presence in a state of the military capacity to injure or even to destroy another state cannot itself be considered a sufficient basis for the defensive use of force.

The use of force in a foreign territory to defend against terrorists will sometimes take the form of an

attack aimed at one or more individuals. The standard by which the propriety of such attacks should be judged is the same applied to more general attacks. Attacks aimed at specific individuals potentially involve claims of "assassination," which is prohibited by an executive order, the scope of which is discussed below. When such attacks are lawful under international law, and therefore are not an "assassination," they are often less damaging to innocent persons than bombings and other less discriminate actions. Yet we seem to disfavor such conduct. The U.S. is obliged in prin-

"Breaches of territorial integrity are always serious. Control over territory is one of the most fundamental attributes of sovereignty. Law-enforcement or military personnel who participate in an operation that infringes this principle risk being treated as criminals, subject to severe penalties."

ciple, by international law and by sound ethics, to utilize the most discriminating measures reasonably possible in exercising self-defense.

3. Abductions — Another highly controversial form of action that violates territorial sovereignty is what is commonly called an "abduction" in international law. An abduction is the forcible, unconsented removal of a person by agents of one state from the territory of another state. American law-enforcement officials, relying on recent statutes making federal crimes of terrorist attacks on Americans overseas, like to refer to abductions as "arrests."

The availability of a U.S. law on which to base the issuance of a warrant may provide law-enforcement personnel with the authority to act under U.S. law; it provides no authority, however, to act under either international law or the law of the state whose territorial sovereignty is breached. To be acceptable under international law, an abduction must satisfy far more exacting standards than the mere availability of an arrest warrant issued by the state responsible for the action.⁴⁵

Abductions are controversial, politically risky and dangerous to the individuals assigned the task. The only abductions carried out during the Reagan administration were in international airspace and in international waters. The forcible removal of a person, especially one being protected by a state hostile to the state conducting the abduction, will be treated as criminal conduct, amounting at the least to a kidnapping. In the course of such an operation, individuals may be killed, leading to charges of murder. Where the state from which the person is taken is not hostile but refuses for reasons of policy to extradite the person seized, an abduction is likely to cause a severe strain on relations.

Abductions have occurred historically, however, with remarkable frequency. Generally, they have been undertaken without prior consultation with authorities in the state involved, presumably in order to avoid a clear refusal to extradite or to surrender the individual seized. Almost invariably, the state responsible for an abduction has apologized for the violation of the other state's sovereignty, and often the individual seized is returned to the state from which he was taken. But once an apology is made, states have sometimes permitted the person abducted to remain in the control of the state to which he was taken.⁴⁶

A significant degree of tolerance of abductions is reflected by two widely accepted practices. First,

states that abduct individuals often find a way to retain and to prosecute them, with or without the consent of the state from which they are taken. Second, we are aware of no state that treats an abduction as an illegal arrest for purposes of its own law when the abducted individuals are being prosecuted.

The Supreme Court of the United States, for example, has consistently held "that the power of a court to try a person for crime is not impaired by the fact that he [has] been brought within the court's jurisdiction by reason of a forcible abduction."⁴⁷ The widespread acceptance of this practice — reflected in the Latin principle *male capere bene detentio* (bad capture, good detention) — suggests that states do not consider abductions offensive enough to deter them through some form of preventive rule or as reflecting any individual right beyond the requirement of fair treatment.

While non-consensual abductions from foreign states should rarely be undertaken, the U.S. reserves the right to engage in this type of action for essentially three reasons. First, for internal political reasons, a state may be unwilling to extradite an accused terrorist or to give its explicit, public consent to his removal. Unofficially, however, the state, or some official of the state, may be prepared to allow the individual to be removed without granting formal consent and may even offer some cooperation in carrying out the action. The appearance that the U.S. had abducted the individual involved could serve in such cases as a cover for the other state's secret cooperation.

Second, an abduction may be necessary where the target is an extremely dangerous individual accused of grave violations of international law. Israeli agents abducted the infamous war criminal Adolf Eichmann from Argentina and brought him before an Israeli court. Argentina protested Eichmann's seizure and initially demanded his

immediate return. Upon Israel's refusal to return him, the Argentine government brought the matter before the U.N. Security Council.

The Security Council resolved that acts such as Eichmann's abduction, "which affect the sovereignty of a member state and therefore cause international friction, may, if repeated, endanger international peace and security"; but the resolution did not insist upon Eichmann's return and instead "request[ed] the Government of Israel to make appropriate reparation in accordance with the

"... the (War Powers Resolution) suggests that the president lacks authority under the Constitution to use the armed forces without prior legislative approval in those situations where such action has most often occurred and is most likely to recur in combatting terrorism."

Charter of the United Nations and the rules of international law."⁴⁸

Israel had previously apologized to Argentina for any violation of its sovereignty that may have occurred. Argentina later accepted this apology, coupled with the Security Council resolution, as an adequate remedy, and Israel proceeded to try, convict and execute Eichmann.

The Eichmann case involved a notorious war criminal. As Ambassador Lodge noted during the Security Council debate, "the whole matter cannot be considered apart from the monstrous crimes with which Eichmann is charged."⁴⁹

The case nonetheless serves in principle as a precedent for the legal acceptability of abducting an individual suspected of crimes widely condemned in international practice. Today's terrorists have the capacity to kill hundreds, even thousands, of innocent people. Some individuals engaged in such acts will be appropriate subjects for abduction, especially when they are actively pursuing future actions that jeopardize hundreds more. In such cases, the traditional prerequisites of self-defense may well be satisfied.

Finally, we retain the option of abducting terrorists to prevent them — and their state supporters — from assuming that they are safe from such unilateral action. To state publicly that the United States does not ever intend to abduct terrorists from other states would merely increase the freedom of terrorists to operate without anxiety. We must never permit terrorists to assume they are safe.

The War Powers Resolution

The War Powers Resolution⁵⁰ is an important instance of domestic law that, when applied rigidly or unintelligently, creates serious obstacles to carrying out lawful and useful military operations against state-sponsored terrorists.

To begin with, the resolution suggests that the president lacks authority under the Constitution to use the armed forces without prior legislative approval in those situations where such action has most often occurred and is most likely to recur in combatting terrorism. Thus, Section 2(c) of the resolution purports to recite the circumstances under which the president may introduce U.S. armed forces into actual or imminent involvement in hostilities.

This list fails to include instances in which the armed forces are used to protect or to rescue Americans from attack, including terrorist attacks. The listing also fails to

include the use of force to defend against attacks by state-sponsored terrorists on military personnel and equipment of the U.S. or of third states whom the president might decide to assist in defending.

Whatever Congress might have intended by this omission in Section 2(c), congressional leaders appear to agree that this section is not a complete listing of the situations in which the president may act without prior legislative approval.⁵¹ Presidents should not be confronted with a legislative declaration that is still claimed by some to imply that prior legislative approval must be obtained for military actions abroad that are essential in the war on terrorism.

The resolution creates another potential difficulty by requiring the president, in Section 3, to consult with Congress "in every possible instance" before introducing U.S. armed forces "into hostilities or into situations where imminent involvement in hostilities is clearly indicated by the circumstances."

President Carter, on the advice of White House Counsel Lloyd Cutler, decided that consultation was not "possible" prior to the rescue mission in Iran. This construction of the word "possible" treats as impossible a consultation that would create an unreasonably great risk to life or to the success of a military mission.

Consultation is in principle an essential form of cooperation between the president and Congress. The president, however, is responsible not only for defending the United States, but also for doing so successfully. The president must be answerable to Congress for using the armed forces, but not in a manner that jeopardizes his ability to achieve the purposes for which such forces are placed at his disposal. Counterterrorist operations will sometimes require the highest possible level of secrecy, particularly those involving the rescue of hostages. The resolution's language continues, however, to provide the basis for claims that the president

must consult prior to any operation when it is literally possible to do so.

Perhaps the most disturbing aspect of the resolution with respect to the nation's ability to combat state-sponsored terrorism is its effort to limit the length of time the president may use the armed forces in a military operation without legislative approval. Section 5 of the resolution provides that, within 60 days after introducing armed forces into a situation involving hostilities or the imminent threat of hostilities, the president must terminate the use of the armed forces unless Congress has declared war or specifically authorized the use of such forces, has extended the 60-day period, or is physically unable to meet as a result of an armed attack on the United States.

The resolution's effort to force presidents to withdraw the armed forces from situations involving hostilities absent specific legislative approval is highly questionable under the Constitution.⁵² Putting aside the constitutional objections to this provision, however, Section 5 is objectionable on policy grounds as well. A 60-day limit poses no problem for most counterterrorist operations, particularly those aimed at terrorist groups. Nonetheless, military operations lasting beyond 60 days might sometimes be necessary against terrorist groups or states that sponsor such groups. In such instances, a law purporting to place an arbitrary time limit could undermine the nation's ability to conduct such operations successfully.

Congress, of course, has substantial legislative powers respecting the use of force. But the issue under Section 5 is whether, even in the absence of any effort by Congress to exercise its powers in a specific context, the president should nonetheless be required to obtain legislative approval to continue such operations beyond the specified time limits. To require positive legislative action has had several undesir-

able results:

- Presidents have refused to accept this limitation, causing divisive inter-branch disagreement;
- Congress has felt compelled to consider and to debate whether to adopt legislation authorizing or terminating such operations within the 60-day period, in order to prevent the appearance of having allowed presidents to act inconsistently with the resolution's purported limitations; and
- Observers of American government, including both our friends and enemies, have been led to believe by the resolution and the debates it causes that the U.S. lacks the resolve and internal cohesion to follow through effectively on military commitments.

In addition to these general difficulties, the resolution should be regarded as inapplicable to ordinary counterterrorist activities. Thus, for example, counterterrorist units should not generally be treated as "armed forces" for this purpose. Operations by such units are not of a traditional military character, and their activities are not ordinarily expected to lead to major confrontations with the military forces of another state. Counterterrorist forces are not equipped for sustained combat with foreign armed forces, but only to carry out precise and limited tasks, particularly rescues and captures. The use of force by counterterrorist units therefore is more analogous to law-enforcement activity by police in the domestic context than it is to the "hostilities" between states contemplated by the War Powers Resolution.

Nothing in the resolution's legislative history indicates that Congress intended it to cover deployments of counterterrorist units. Congress was concerned with "undeclared wars," such as the Vietnam War, rather than emergency or small-unit operations.⁵³ Congress was concerned about the stationing of troops abroad, but only in situations that could lead to

imminent hostilities, rather than as a preparatory measure to permit the surgical operations that are intended for counterterrorist actions.⁵⁴

The resolution's limited applicability to counterterrorist forces could be recognized by Congress without interfering with its applicability to the use of conventional forces against facilities or forces of another state, even for counterterrorist purposes. Thus, the self-defense operation against Libya on April 14, 1986, for example, though a counterterrorist operation, would still fall within the intended scope of the resolution.

Assassination

Executive Order 12333, issued by President Reagan in 1981, states that "[n]o person employed or acting on behalf of the United States Government shall engage in, or conspire to engage in assassination."⁵⁵ This order, which remains in effect and is binding on all executive-branch personnel, is derived from a virtually identical provision issued by President Ford in 1976.⁵⁶

Prohibiting assassination is legally, militarily and morally sound. Assassination is, in essence, intentional and unlawful killing — murder — for political purposes.⁵⁷ This society should not and need not authorize its military personnel or its special forces, any more than its police, to engage in murder for the alleged purpose of advancing our national security. Our nation has more to lose by engaging in such conduct than our moral standing.

Assassinating high officials of foreign governments will tend to provoke similar conduct aimed at our own leaders, even though such retaliatory actions may have no proper basis. A limitation on assassination undoubtedly places the U.S. at a disadvantage in contests with states or groups that routinely resort to murder, even of citizens having nothing to do with their political objectives. But that is a price we are prepared to pay. What

we must not permit is the improper use of the assassination prohibition to limit or to prevent the legitimate resort to lethal force in defending our nationals and friends.

The assassination prohibition is prone to over-broad application for several reasons. Americans have a distaste for official killing, especially for the intentional killing of specific individuals. Furthermore, once published, a prohibition of this sort attracts public and congressional attention. Today, whenever the U.S. contemplates or undertakes a counterterrorist operation in which an individual might be or is killed, claims are made in the press and in Congress that the death would be or was an assassination. The controversy associated with such debates — and the natural desire of officials to avoid controversial issues — leads them (and the agencies they represent) to shy away from such actions, even when they involve no unlawful conduct. The increased reluctance to use lethal force that results is a serious detriment in the national-security planning process.

The meaning of the term "assassination" in historical context, and in the light of its usage in the laws of war, is simply any unlawful killing of particular individuals for political purposes.

First, virtually all available definitions of assassination include the word "murder," which in law is a word of art. Murder is a crime, the most serious form of criminal homicide. That element is the most fundamental aspect of the assassination prohibition. All criminal killing is therefore potentially subject to the prohibition.

Under no circumstances, however, should assassination be defined to include any lawful homicide. Assassination is also commonly defined as killing with a political purpose. Murders that have no political purpose or context are criminal and remain subject to punishment, but these, too, should not be characterized as assassinations.

Other elements offered in available definitions seem superfluous or even misleading. Thus, for example, whether a killing is done "secretly" or "treacherously" and whether the person is "prominent" would appear to be of little or no consequence for purposes of the executive order. Nor should it matter that the assassin "kills in the belief that he is acting in his own private or public interest" or whether the action is "surprising" or "secret." The pivotal elements in terms of controlling the behavior of government officials would seem to be illegality and political purpose.⁵⁸

Second, the historical background of the term casts considerable light on its meaning and strongly supports a definition limited to illegal, politically motivated killing. The executive order was adopted immediately after revelations and controversy about the alleged role of the CIA in planning the killing of certain heads of state and other high officials. The House and the Senate conducted extensive investigations into the CIA's activities.⁵⁹

The Senate investigation gave special attention to the question of assassinations, publishing a 349-page report entitled "Alleged Assassination Plots Involving Foreign Leaders."⁶⁰ The Senate investigation explored the CIA's alleged role in assassination plots against five individuals: Patrice Lumumba, premier of the Congo; Fidel Castro, premier of Cuba; Rafael Trujillo, strongman of the Dominican Republic; Ngo Dinh Diem, president of South Vietnam; and Rene Schneider, commander-in-chief of the Army of Chile, who opposed a military coup against President Salvador Allende.

The Senate Select Committee found that CIA officials might have undertaken these plots without express authorization from the president and that some CIA officials were operating under the assumption that such actions were permissible. In its final recommendations, the Senate committee

endorsed President Ford's adoption of the original executive order prohibiting "political assassination" and proposed a legislative ban on all "political assassinations."⁶¹

This background makes clear that the initial ban on assassination was adopted in response to allegations concerning planned killings of heads of state and other important government officials. All the plots examined by the committee would have been illegal if instigated by a foreign government, in that no effort was made to justify any of them as an act of self-defense or on any other legally sufficient basis.

The prohibition's background also indicates that it should not be limited to the planned killing only of political officials, but that it should apply to the illegal killing of any person, even an ordinary citizen, so long as the act has a political purpose.⁶² Conversely, this background — and the types of killings being criticized at the time — lends no support to applying the executive order to lawful killings undertaken in self-defense against terrorists who attack Americans or against their sponsors.

An examination of the laws of war also supports limiting the assassination prohibition to illegal killing. The most fundamental protection that the laws of war extend to combatants is the right to use lethal force against any person who is a legitimate military target. Combatants are permitted in such operations to attack any opposing combatant (including supply or command personnel), or any other proper military target, through any proper military means (land, sea, air, artillery, commando, etc.). In addition, one of the harsh but accepted consequences of military operations is the collateral death of noncombatants pursuant to lawful attacks.

The raid on Libya in 1986 has been challenged as an effort (in part) to kill Colonel Khadafy and therefore as an "assassination." The raid was a legitimate military oper-

ation, however, in which the U.S. attacked five separate military targets, all of which had been utilized in training terrorist surrogates. Some U.S. policy makers may have been aware that Colonel Khadafy used one of the target bases as one of several places in which he lived, but that fact did not make the base involved an illegitimate target. Nor was Colonel Khadafy personally immune from the risks of exposure to a legitimate attack. He was and is personally responsible for Libya's policy of training, assisting and utilizing terrorists in attacks on U.S. citizens, diplomats, troops and facil-

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ities. His position as head of state provided him no legal immunity from being attacked when present at a proper military target.

Limits do exist on targeting, even of military personnel, in the course of legitimate military operations. U.S. Army General Order No. 100 (Paragraph 148), published in 1863, defines "assassination" to prohibit making any particular person in a hostile country an "outlaw" to be killed without the benefit of ordinary limitations:

Assassination. The law of war does not allow proclaiming either an individual belonging to the hostile army, or a citizen,

or a subject of the hostile government, an outlaw, who may be slain without trial by any captor, any more than the modern law of peace allows such international outlawry; on the contrary, it abhors such outrage. ...

This rule, consistent with the views of early writers of international law, continues to guide American forces. Enemy combatants who fall into our hands, for example, may not be summarily executed, however heinous their personal misdeeds. At the same time, this rule has never been understood to preclude military attacks on individual soldiers or officers, subject to normal legal requirements. U.S. Army Field Manual 27-10 provides in this regard (Paragraph 31):

(Article 23b, Hague Regulations, 1907) is construed as prohibiting assassination, proscription, or outlawry of an enemy, or putting a price upon an enemy's head, as well as offering a reward for an enemy "dead or alive." It does not, however, preclude attacks on individual soldiers or officers of the enemy whether in the zone of hostilities, occupied territory, or elsewhere.

Attacks on individual officers have been authorized and their legality has been accepted without significant controversy. Among the most famous of these was the deliberate downing by the United States, on April 18, 1943, of a Japanese military aircraft known to be carrying Admiral Yamamoto.

An interesting recent case, characterized by some Reagan administration officials as a "political assassination," was the killing of Abu Jihad, the PLO's top military strategist. On April 16, 1988, commandos apparently landed at Tunis, entered the home of Abu Jihad by killing several guards, and then killed the PLO leader but left his family unharmed.

The commandos wore no insignia, used masks to cover their faces, and no nation or group thereafter

claimed (or admitted) responsibility for the operation. Under these circumstances, the U.S. abstained in the Security Council on a resolution that condemned the action as a violation of Tunisia's territorial integrity. The U.S. representatives expressed disapproval of political assassination, but declined to vote for the resolution because it was one-sided.⁶³

The attack is widely believed to have been launched by Israel. Some commentators, relying on this assumption, criticized the Reagan administration for its position, arguing that Israel had ample basis for killing Abu Jihad as a measure of self-defense. Abu Jihad is accused of being personally responsible for several terrorist attacks in the occupied territories and in Israel proper, including an assault on a civilian bus that resulted in three Israeli and three Palestinian deaths.

These allegations, if true, might establish the potential legality of the target, but they would not alone legitimize an attack. While the U.S. regards attacks on terrorists in the sovereign territory of other states as potentially justifiable when undertaken in self-defense, a state's ability to establish the legality of such an action depends on its willingness openly to accept responsibility for the attack. It must also explain the basis for its action and demonstrate that reasonable efforts were made prior to the attack to convince the other state to prevent the offender's unlawful activities from occurring. In such a situation, the state involved might have acted properly and might have sound reasons for its secret conduct. A state cannot act secretly and without public justification in its self-defense, however, and expect nonetheless to have its actions condoned by the world community.

Conclusion

State-sponsored terrorism has generated unprecedented dangers to the national security of democratic nations, which have in turn

created the need to develop defensive actions, both military and prosecutorial. In our system of government, the law will govern the scope, and hence the effectiveness, of our response.

The stakes are high. State-sponsored terrorists are now capable of killing hundreds of innocents at a clip. We have made great strides in preventing terrorist crimes within the territorial United States, in other democracies, and in airports all over the world. But the technology for building bombs that can

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escape detection has outstripped the technology for preventing the tragedies they cause.

We have reason to fear, moreover, that if this form of warfare continues it will get even bloodier. The bombs are getting smaller, more powerful and more numerous. Other targets may be even more vulnerable than airplanes, and other methods of killing (such as chemical, bacterial and even nuclear devices) may someday be used by terrorists because they are increasingly becoming available to their sponsors. We can count on no fore-

seeable political development to end this danger.

The battle to influence the law and to ensure that it serves the interests of freedom and the civilized world is therefore far from some abstract exercise. It is a struggle to determine whether the rule of law will prevail. It is baseless to contend that the United States no longer supports the rule of law merely because it is engaged in this struggle. We are not struggling against the rule of law, but for a rule of law that reflects our values and methods: the values of custom, tolerance, fairness and equality; and the methods of reasoned, consistent and principled analysis. We must oppose strenuously the adoption of rules of law that we cannot accept, because of the very fact that we take law so seriously.

We have no cause to doubt the propriety of this effort. The rules of law that we advocate enhance our capacity to defend our national security, but that hardly makes them inappropriate or unsound. Why should the law, for example, give its blessing to rules that:

- enable states to refuse to extradite individuals for committing internationally recognized crimes merely because the crimes were politically motivated?
 - limit a nation's right to defend itself to situations in which its territory or political independence is threatened, thereby preventing it from defending its citizens abroad?
 - enable terrorist groups to avoid responsibility for the criminal acts of their members, despite the universality of the rule of liability for criminal complicity?
 - enable states to avoid responsibility, in accordance with traditional, universally accepted standards, for providing sanctuary and support to groups known to be engaged in terrorist acts?
 - grant absolute and overriding weight in all situations to the interest of territorial integrity?
- In the domestic arena as well,

laws should not be written or applied needlessly to diminish our capacity to defend the national security. Our president is accountable to Congress, which has ample power to review and to exercise a high degree of control over the policies of any administration. No need exists, however, for a War Powers Resolution that casts doubt upon the president's traditional and constitutionally-based authority to defend Americans and American interests from attack without prior legislative approval. The last four presidents have made clear, moreover, that executive officials must not murder anyone, anywhere in the world, for

political purposes. No need exists to construe the assassination prohibition in a manner that inhibits the lawful exercise of lethal force.

Secretary Shultz said that the free nations "cannot afford to let the Orwellian corruption of language hamper our efforts to defend ourselves, our interests, or our friends."⁶⁴ The same is true of law. We must not allow the corruption of international law, such as the effort to legitimize "wars of national liberation" or to diminish the inherent right of self-defense, to hamper our national-security efforts. Rather, we must ensure that the law is, in fact, on our side,⁶⁵ and that, while its

proper restraints are respected and effectively implemented, no artificial barrier is allowed to inhibit the legitimate exercise of power in dealing with the threat of state-sponsored terrorism. ✕

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Endnotes

- ¹ Sofaer, "Terrorism and the Law," 64 *Foreign Aff.* 901 (1986).
- ² An effort by Syria, for example, to renew the sterile U.N. debate over the definition and causes of terrorism failed; many states have signed the Maritime Terrorism Convention, providing for the prosecution or extradition of pirates, irrespective of whether they act for "private" or political objectives; and the United States has formally refused to ratify Protocol I of the Protocols Additional to the Geneva Protocols on the Laws of War, which provides terrorists, among other things, with the right to POW status.
- ³ See generally *Dep't of State, U.S. Counter-terrorism Policy Notebook*, "Rule of Law" (1989).
- ⁴ See *Public Report of the Vice President's Task Force on Combatting Terrorism* 7-8 (1986).
- ⁵ *Military and Paramilitary Activities in and against Nicaragua*, 1986 I.C.J. 14 (Judgment on the Merits of June 27, 1986) [hereinafter *Nicaragua v. United States*].
- ⁶ E.g., 18 U.S.C. §§2331, 3071-3077 (1982).
- ⁷ Address Before the Park Avenue Synagogue, Oct. 25, 1984, reprinted in *Dep't of State Bulletin* 12, 16 (Dec. 1984) [hereinafter Park Avenue Synagogue Address].
- ⁸ *Declaration of Principles of International Law Concerning Friendly Relations and Cooperation Among States in Accordance with the Charter of the United Nations*, U.N. General Assembly Resolution 2625 (1970).
- ⁹ See, e.g., Sofaer, "International Law & the Use of Force," *Nat'l Interest*, Fall 1988, at 53, 54-57.
- ¹⁰ Judge Singh assumed the flow of arms had "been both regular and substantial, as well as spread over a number of years and thus amounting to intervention." *Nicaragua v. United States*, 1986 I.C.J. at 154 (Sep. Op. Singh, J.P.).
- ¹¹ Id. at 119 (Judgment on the Merits). Professor Joachim A. Frowein recently supported this line of argument, contending: "If words mean anything, there cannot be any question that an armed attack cannot consist of a terrorism action against citizens on foreign territory, even if tolerated by the territorial state." Frowein, *The Present State of Research Carried Out by the English-Speaking Section of the Centre for Studies and Research*, 1988 *Academie Du Droit* 55, 64.
- ¹² *Nicaragua v. United States*, 1986 I.C.J. at 127.
- ¹³ "[W]hen such attacks are aimed at the government or intended to change a policy of that state, the attacks are reasonably considered as attacks on the state in question. In some cases, attacks on non-nationals who have ethnic or religious affiliations with a state opposed by the terrorists should be regarded as attacks on the state." Oscar Schachter, "The Extra-Territorial Use of Force Against Terrorist Bases," 11 *Hous. J. Int'l Law* 309, 312 (1989).
- ¹⁴ Statistics compiled by the Office of the Coordinator on Anti-terrorism, U.S. Dep't of State (1989).
- ¹⁵ Address Before the Jonathan Institute, June 24, 1984, reprinted in *Dep't of State Bull.* 31, 33 (Aug. 1984).
- ¹⁶ Park Avenue Synagogue Address, *supra* note 7, at 16.
- ¹⁷ Letter from U.S. Secretary of State Daniel Webster to Lord Ashburton, reprinted in 2 *Moore's Digest of Int'l Law* 412 (1906).
- ¹⁸ *Nicaragua v. United States*, 1986 I.C.J. at 122.
- ¹⁹ Id. at 269-70, 367 (Diss. Op. Schwebel, J.).
- ²⁰ E.g., Am. Law Institute, Model Penal Code §206 (1962); 18 U.S.C. §2 (1982); Devitt & Blackmar, 1 Federal Jury Prac. & Proc. §12.01 (1977).
- ²¹ E.g., Am. Law Institute, Model Penal Code §2.07 (1962); Devitt & Blackmar, 1 Federal Jury Prac. & Proc. §12.07 (1977); id. at 176-77 (1988 Supp.) (interpreting 18 U.S.C. §2 with respect to agency).
- ²² E.g., Am. Law Institute, Restatement (Second) of Agency §27 (1958).
- ²³ Franck & Niedermeyer, "Accommodating Terrorism: An Offense Against the Law of Nations," unpublished manuscript, at 7 (1989) (to be published in *Tel Aviv University Law Review*).
- ²⁴ *International Status of South West Africa Case*, 1950 I.C.J. 146, 148 (Sep. Op. McNair, J.) (Advisory Opinion).
- ²⁵ Pub. L. 100-204, codified at 22 U.S.C. §§5201-5203 (1982).
- ²⁶ Dep't Statement (Nov. 26, 1988), reprinted in *Dep't of State Bull.* 53 (Feb. 1989).
- ²⁷ Racketeer Influenced and Corrupt Organization Act, codified beginning at 18 U.S.C. §1961; compare *United States v. Ivic*, 700 F.2d 51 (2d Cir. 1983) (government failure to show "financial purpose" of terrorist organization's acts requires dismissal of RICO indictment) with *United States v. Bageric*, 706 F.2d 42 (2d Cir.), cert. denied, 464 U.S. 840, 917 (1983) (because terrorist organization perpetrated the "classic economic crime" of extortion more than 50 times, elements of RICO offense satisfied).
- ²⁸ E.g., statement of President Assad of Syria, in *Time*, 3 April 1989, at 30.
- ²⁹ *Nicaragua v. United States*, 1986 I.C.J. at 65 (emphasis added).
- ³⁰ Id. at 343-44 (Diss. Op. Schwebel, J.).
- ³¹ 7 *Moore's Digest of Int'l Law* 999 (1970).
- ³² American Mexican Claims Comm'n, Report to the U.S. Secretary of State, reprinted in 8 *Whiteman Digest of Int'l Law* at 748, 753 (1967).
- ³³ *Reparation for Injuries Suffered in the Service of the United Nations*, 1949 I.C.J. 174, 184-85 (Advisory Opinion).
- ³⁴ *Corfu Channel Case (U.K. v. Alb.)*, 1949 I.C.J. 4, 22 (Judgment on the Merits); *Case Concerning United States Diplomatic & Consular Staff in Tehran (U.S. v. Iran)*, 1980 I.C.J. 32-33, 36.
- ³⁵ *United States v. Arjona*, 120 U.S. 479, 484 (1887).
- ³⁶ *United States v. Yunis*, 681 F. Supp. 896, 906-07 (D.D.C. 1988).
- ³⁷ Weekly Compilation of Presidential Documents 17-18 (Jan. 7 1986).
- ³⁸ Address Before the National Defense University, Jan. 15, 1986, reprinted in *Dep't of State Bull.* 15, 17 (March 1986).
- ³⁹ Recent affirmations of these principles include a report of The Hague Academy of International Law, *The Legal Aspects of International Terrorism*, 1988 *Academie Du Droit* 15-17 (Frowein, J.A. Reporter). The same conclusions are reached by Professor Oscar Schachter. Schachter, *supra* note 13, at 310-11. He regards the obligation to prosecute or to extradite suspected terrorists as "now accepted customary international law." Id. at 311. Principle 2.1 of the Hague Academy's report finds an additional obligation of states "to furnish information available to them to other states if that information is relevant to prevent terrorist acts affecting human lives in an indiscriminate manner." *The Legal Aspects of International Terrorism*, *supra*, at 16; see also id. at 61.
- ⁴⁰ Statement before the U.N. Security Council on July 12, 1976, reprinted

in *Dep't of State Bull.* 181, 181-82 (Aug. 2, 1976).

⁴¹ U.N. Sec. Council Res. 573, reprinted in Off. of the Historian, U.S. Dep't of State, 1985 *Am. Foreign Policy Current Doc.* 517.

⁴² Statement before the U.N. Security Council on 4 October 1985, reprinted in Off. of the Historian, U.S. Dep't of State, 1985 *Am. Foreign Policy Current Doc.* 581.

⁴³ Remarks by U.S. Dep't of State spokesman Fischer on June 8, 1981, reprinted in Off. of the Historian, U.S. Dep't of State, 1981 *Am. Foreign Policy Current Doc.* 684.

⁴⁴ Statement before the U.N. Security Council on June 9, 1981, reprinted in Off. of the Historian, U.S. Dep't of State, 1981 *Am. Foreign Policy Current Doc.* 687, 688.

⁴⁵ There are also domestic-law considerations. In a 1980 opinion on this subject, the Department of Justice stated that the FBI lacks domestic authority to undertake extraterritorial law-enforcement actions in violation of another country's territorial sovereignty without the country's consent. U.S. Dep't of Justice, Extraterritorial Apprehension by the Federal Bureau of Investigation, 4B *Opinions of Legal Counsel* 543, 544, 553 (1980). A revised opinion issued by the Department of Justice on June 21, 1989, concluded that as a matter of domestic law, such actions could be authorized under certain circumstances. For a description of the later opinion, see Statement of William P. Barr (Ass't Attorney General, Office of Legal Counsel, U.S. Dep't of Justice), *The Legality as a Matter of Domestic Law of Extraterritorial Law Enforcement Activities That Depart From International Law: Hearings Before the Subcomm. on Civil and Constitutional Rights of the House Judiciary Comm.*, 101st Cong., 1st Sess. (Nov. 8, 1989).

⁴⁶ In addition to the Eichmann case, see *infra* notes 48-49 and accompanying text, several instances have resulted in diplomatic solutions that have permitted the abducting state to prosecute the fugitive. In 1863, for example, the Canadian government abducted two persons and brought them back to Canada for trial. After an official complaint by the United States, the Canadian government apologized and offered to return the two. Satisfied with the apology, the U.S. permitted the two men to be tried in Canada for their felonies. 4 *Moore's Digest of Int'l Law* 329 (1906). See also Current Notes, "Kidnapping of Fugitives from Justice on Foreign Territory," 29 *Am. J. of Int'l Law* 502, 506 (1935) (abduction in Switzerland by Germany); O'Higgins, "Unlawful Seizure and Irregular Extradition," 36 *Brit. Y.B. on Int'l Law* 279, 281-82 (1960) (abduction, conviction and execution by England in the face of Spanish diplomatic protests). In other instances, abductions led to prosecution where no diplomatic protest was made. Max Planck Institute for Comparative Pub. Law and Int'l Law, 8 *Encyclopedia of Pub. Int'l Law* 357 (1985) (discussing case of Antoine Argoud, abducted in Germany by France); 4 *Hackworth Digest of Int'l Law* 224-28 (1942) (discussing several cases of prosecution after abduction).

In addition to the materials cited above, for discussion of the practice of abduction, see, e.g., J. Moore, 1 *Extradition and Int'l Rendition* 281-302 (1891); 2 *Moore's Digest of Int'l Law* 333-36 (1906); Hyde, "Notes on Extradition Treaties of the U.S.," 8 *Am. J. of Int'l Law* 487, 499-501 (1914); Dickinson, "Jurisdiction Following Seizure or Arrest in Violation of Int'l Law," 28 *Am. J. of Int'l Law* 231 (1934); Morgenstern, "Jurisdiction in Seizures Effected in Violation of International Law," 29 *British Y.B. of Int'l Law* 265 (1952); I. Shearer, *Extradition in Int'l Law* 72-76 (1971); Bassiouni, "Unlawful Seizures and Irregular Rendition Devices as Alternatives to Extradition," 7 *Vand. J. of Transnat'l Law* 25 (1973); Note, "Extraterritorial Jurisdiction and Jurisdiction following Forcible Abduction," 72 *Mich. L. Rev.* 1087 (1974); Horbaly & Mullin, "Extraterritorial Jurisdiction and Its Effect on the Administration of Military Criminal Justice Overseas," 71 *Mil. L. Rev.* 1 (1976); Abramovsky & Eagle, "U.S. Policy in Apprehending Alleged Offenders Abroad: Extradition, Abduction, or Irregular Rendition," 57 *Or. L. Rev.* 51 (1977); Recent Development, "U.S. Legislation to Prosecute Terrorism," 18 *Vand. J. of Transnat'l Law* 915 (1985); Findley, "Abducting Terrorists Overseas for Trial in the United States," 23 *Tex. Int'l L.J.* 16 (1988).

⁴⁷ *Frisbie v. Collins*, 342 U.S. 519, 522 (1952). In *Ker v. Illinois*, 119 U.S. 436 (1886), for example, the court affirmed the conviction of a person tried in an Illinois court after he had been abducted in Peru and brought back to the U.S. for trial.

⁴⁸ U.N. Security Council Res., U.N. Doc. S/4349 (June 24, 1960), reprinted in 5 *Whiteman Digest of Int'l Law* 211-12 (1965).

⁴⁹ Statement before the U.N. Security Council on June 22, 1960, reprinted in *Dep't of State Bull.* 115 (July 18, 1960).

⁵⁰ Pub. L. 93-148, codified at 50 U.S.C. §§1541-1548 (1982).

⁵¹ See Monroe Leigh's well-known elaboration of the situations in which the president has the authority to introduce armed forces into hostilities, 94th Cong., 1st Sess., Subcomm. on International Security and Scientific Affairs, House Comm. on International Relations, *Hearings on War Powers: A Test of Compliance* (1975).

⁵² E.g., *The War Powers After 200 Years: Hearings Before the Subcomm. on War Powers of the Senate For. Relations Comm.*, 100th Cong., 2d Sess. 147 (testimony of Abraham D. Sofaer and comments of Senator Joseph Biden). Section 5(c) of the resolution provides, for example, that the president must remove U.S. forces from hostilities "if the Congress so directs by concurrent resolution," a legislative veto provision that is unconstitutional. See *Chadha v. INS*, 462 U.S. 919 (1983). Some of these objections would be rectified by legislation proposed by Senators Byrd, Nunn and Warner. See Sen. Joint Res. 323, 100th Cong., 2d Sess.

⁵³ See *War Powers Legislation: Hearings Before the Senate Comm. on Foreign Relations*, 92nd Cong., 1st Sess. 38 (Senator McGee); id. at 193-94 (Senator Eagleton); id. at 248 (Senator Pearson); id. at 334 (Senator Mathias).

⁵⁴ See id. at 336 (Rep. Findley); see also id. at 406 (WPR not intended to "hamstring legitimate presidential powers to respond to emergency situations"); *War Powers Legislation, 1973: Hearings Before the Senate For. Relations Comm.*, 93rd Cong., 1st Sess. 65 (Fullbright saying not directed against situations requiring immediate response to direct attack). See also *War Powers, Libya and State-sponsored Terrorism: Hearings Before the Subcomm. on Arms Control, International Security and Science of the House For. Affairs Comm.*, 99th Cong. 2d Sess. 5-32 (Statement of Abraham D. Sofaer, U.S. Dep't of State Legal Adviser).

⁵⁵ Exec. Order No. 12333, 3 C.F.R. §2.11, at 200, 213 (1982). For an excellent analysis of this prohibition, see generally Definition of Assassination, prepared by W. Hays Parks, Chief, International Law Branch, Int'l Affairs Div., Office of the Judge Advocate General, Dep't of the Army (Nov. 2, 1989). This analysis was coordinated with the legal offices of the Department of State, the Department of Defense, and the Central Intelligence Agency, as well as the Office of Legal Counsel of the Department of Justice and the National Security Council Legal Adviser.

⁵⁶ Exec. Order 11905, 3 C.F.R. §5(g), at 90, 101 (1977). The only substantive change in the prohibition since that date is that the earliest version prohibited "political" assassination; the word "political" was deleted from the order by President Carter in 1978. Exec. Order 12036, 3 C.F.R. §2-305, at 112, 129 (1979).

⁵⁷ See *Webster's New Collegiate Dictionary* 67 (1977); *Oxford Companion to Law* (1980). See also McConnel, *The History of Assassination* 12 (1969).

⁵⁸ See *supra* note 56 and accompanying text; see also F. Ford, *Political Murder* 2 (1985); *Webster's Ninth New Collegiate Dictionary* (1984). U.S. law also establishes independent criminal offenses for attacks against U.S. governmental officials. Anyone who kills, kidnaps or assaults the president, the vice president, a Supreme Court justice, a congressman, a cabinet official, or a member of the presidential staff, may be prosecuted. 18 U.S.C. §351 (1982) (in chapter on "Congressional, Cabinet, or Supreme Court Assassination"); 18 U.S.C. §1751 (1982) (in chapter on "Presidential and Presidential Staff Assassination").

⁵⁹ See *U.S. Intelligence Agencies and Activities: Hearings Before the House Select Comm. on Intelligence*, 94th Cong., 1st & 2d Sess. Parts 1-6 (1975-76); *Intelligence Activities — Senate Res. 21: Hearings Before the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong., 1st Sess. Volumes 1-7 (1975).

⁶⁰ *Alleged Assassination Plots Involving Foreign Leaders: An Interim Report of the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities* (Norton & Co. 1976).

⁶¹ *Foreign and Military Intelligence: Final Report of the Senate Select Comm. to Study Governmental Operations with Respect to Intelligence Activities*, 94th Cong. 2d Sess. 448 n.29.

⁶² During the years after President Ford adopted Executive Order 11,905, several bills were introduced in Congress to convert the ban to a legislative one. A bill in the House in 1976 would have mandated that "whoever, except in time of war, while engaged in the duties of an intelligence operation of the government of the United States, willfully kills any person shall be imprisoned for not less than one year." H.R. 15,542, 94th Cong., 2d Sess. §9(1) (1976). This effort to cover all such killings might explain the issuance in 1978 of a new executive order prohibiting any "assassination," not only "political" assassination.

⁶³ U.N. Sec. Council Res. 611 (April 25, 1988); statement before the U.N. Sec. Council (April 25, 1988).

⁶⁴ Park Avenue Synagogue Address, *supra* note 7, at 14.

⁶⁵ "We seem to be forgetting that the law is on our side, that the very instruments of international law were drafted to defend democracy and to oppose terrorists and totalitarians." D. Moynihan, *Terrorists, Totalitarians, and the Rule of Law in Terrorism: How the West Can Win* 41, 42 (B. Netanyahu, ed. 1986) (emphasis in original).

Legal Aspects of Security Assistance

by retired Lt. Col. Thomas R. Simmons

Security assistance is a valuable part of the overall U.S. foreign-assistance program. Designed to achieve global security by providing advice and equipment to developing nations to help them become self-sufficient, security assistance has its roots in U.S. public laws which contain security-assistance regulations, appropriations, restrictions and reporting relationships.

Article II, Section 1, of the Constitution establishes the President as the single chief executive in matters of foreign policy. In the area of foreign relations, the United States, like every other state, is concerned primarily with the achievement of those objectives of national interest which it conceives to be of paramount significance.

If management of our external affairs is to be rational, it must have goals that harmonize with, and supplement, the internal policies and programs of the government, whether they be the promotion of commerce and trade, the

acquisition of territory or power, or the maintenance of peace and security.

One of the primary methods used to carry out our foreign and national-security policies has been and remains the providing of equipment and defense services, including training and economic assistance, or, stating it another way, by providing security assistance.

Legislation

With respect to the current U.S. Security Assistance Program, two basic legislative acts are involved: The Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act of 1976, as amended. The FAA and AECA authorize the President to transfer defense articles and services, including training, to eligible foreign countries and international organizations under the Military Assistance Program, the International Military Education and Training Program, and the Foreign Military Sales Program.

The President determines which

foreign countries and international organizations are eligible to purchase U.S. defense articles and services. He has numerous assistants, cabinet officers and other subordinate officials to oversee the conduct of the U.S. Security Assistance Program. The President has delegated the authority for management of these programs to the Secretary of State and the execution of these programs to the Secretary of Defense. The U.S. Army transfers defense articles and services to foreign recipients under the auspices of the Security Assistance Program.

The statutory role of the Secretary of State is contained in Section 622 of the FAA and Section 2 of the AECA. Under the authority of the President, the Secretary of State is responsible for the supervision and direction of economic assistance, military assistance, military education and training, and sales and export programs. The Secretary of State determines whether or not there will be a security-assistance program and how it

can best serve the foreign policy of the U.S.

DoD involvement

The Department of Defense, from the standpoint of overall effort measured in man-years, has the greatest involvement in security assistance of any department within the executive branch. As prescribed by the FAA and AECA, the Secretary of Defense has primary responsibility for:

- the determination of military-equipment requirements
- the procurement of military equipment in a manner which permits its integration with service programs
- the supervision of equipment use by recipient countries
- the supervision of the training of foreign military and related civilian personnel
- the movement and delivery of military equipment
- the establishment of priorities in the procurement, delivery and allocation of military equipment
- the performance of any other functions within DoD with respect to the furnishing of military assistance, education, training, sales and guarantees.

Security assistance may be provided to a foreign country only for one or more of the following reasons:

- to provide internal security
- to aid in legitimate self-defense
- to permit the recipient's forces to participate in regional or collective arrangements or measures consistent with the U.N. charter
- to permit such participation in collective measures requested by the U.N. for the purpose of maintaining or restoring international peace and security
- to enable recipient forces in less-developed friendly countries to construct public works and engage in other economic or social-development activities.

As a general rule, FAA funds may not be used to provide training, advice or financial support for foreign police, prisons or other civilian law-

enforcement forces. They are also prohibited from any program for internal intelligence or surveillance on behalf of any foreign country.

Assistance programs

The Annual Integrated Assessment of Security Assistance is a report submitted by U.S. diplomatic missions in other countries which, in addition to an assessment of the country's capabilities, contains rec-

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ommended and projected levels of security assistance with regard to acquisition of defense articles and services from the U.S.

To ensure continuity with existing program goals and new program initiatives, the AIASA is carefully developed in joint consultations between the security-assistance organization, the country team and the host-country ministry of defense.

The AIASA is used to develop the

Congressional Presentation Document, which provides the detailed supporting information prepared by the administration in its justification to Congress of the proposed annual U.S. Security Assistance Program.

The CPD is critical in the program-development process, since it brings together all the planning and programming efforts of the administration and provides the basis for the authorization and appropriations processes conducted by Congress. The CPD covers the five security-assistance program categories that require government funding: the Military Assistance Program; the International Military Education and Training Program; the Economic Support Fund Program; the Peacekeeping Operations Program; and the Foreign Military Sales Financing Program. A sixth category, the Foreign Military Sales Program, does not require government funding.

The Military Assistance Program, prior to FY 1982, provided defense articles and related services directly to eligible foreign governments on a grant basis. During the 1950s and 1960s, this grant-aid-type program involved annual authorizations and appropriations in the billions of dollars. The growth of foreign military sales during the late 1970s led to the phasing out of most MAP grants in the early 1980s. An amendment to the FAA paved the way for a major change in the application of MAP. The amendment permits the transfer of a country's grant MAP funds into an FMS trust fund, where they are merged with that country's cash deposits and any available FMS financing money to fund the country's FMS cases. This amendment resulted in an increase of MAP funding between 1982 and 1987 from \$176 million to \$950 million, but it has subsequently decreased by 50 percent.

The International Military Education and Training Program provides training in the United



An American soldier on a mobile training team teaches foreign soldiers to disassemble and clean the M-16 rifle.

File photo

States and, on an exceptional basis through the Security Assistance Training Management Office, overseas training in the form of security-assistance teams. In addition to teaching military skills and U.S. military doctrine, IMET gives the U.S. a chance to influence the future civilian and military leadership of other countries.

The **Economic Support Fund Program** is authorized by the FAA and was established to promote economic and political stability in areas where the United States has determined that economic assistance can be useful in helping to secure peace or to avert major economic or political crises. A substantial amount of funds goes for balance-of-payments-type aid, but **ESF** also provides programs aimed at a country's primary needs in health, education, agriculture and family planning.

The **Peacekeeping Operations Program** is authorized by the FAA and was established to provide that portion of security assistance devoted to programs such as the U.S. contribution to the United Nations

force in Cyprus and the Multinational Force and Observers, which implements the 1979 Egyptian-Israeli peace treaty.

The **Foreign Military Sales Financing Program** has experienced a variety of substantive and terminology changes in recent years. At present, the program consists of congressionally appropriated grants and loans which enable eligible foreign governments to purchase U.S. defense articles, services and training through either the Foreign Military Sales Program or direct-commercial-sales channels. The **FMFP** is authorized under the provisions of the AECA, and originally served to provide an effective means for easing the transition of foreign governments from grant aid to cash purchases.

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and international organizations will participate in the **FMS** program, with total estimated sales of \$8 billion.

Legal limitations

The International Security Assistance Act of 1977 was a landmark law for **security-assistance offices**, or **SAOs**, on several counts, principally in the areas of types of SAOs and their functions. In recent years, the nature of security-assistance-related activities performed by armed-forces personnel overseas has undergone considerable transformation from the advisory and training functions traditionally associated with U.S. Military Assistance Advisory Groups.

The changes in function, as well as in organization, have occurred because of congressional pressures to prevent "another Vietnam," a shift in the primary nature of security assistance from grant aid to foreign-military and direct-commercial sales, and finally, an improved capability by recipient and purchaser governments to better handle their affairs.

The International Security Assistance Act specifies how many armed-forces personnel can be assigned to U.S. diplomatic missions worldwide on a permanent basis to perform security-assistance management functions. It also regulates, in some cases, how many of these personnel can be assigned to specific countries. In 15 countries, identified by name, the U.S. can have more than six permanently assigned armed-forces personnel, while most other countries can have only three.

These limitations on SAO manning deal only with those persons permanently assigned to U.S. diplomatic missions overseas. There are, in addition to these SAOs, several other teams and organizations which may perform security-assistance functions in a country under the direction and supervision of the chief of the U.S. diplomatic mission. These special teams and organizations are assigned to perform limited tasks for specified periods. They include technical assistance field teams, or TAFTS; mobile training teams, or MTTs; technical assistance teams, or TATS; and site surveys. According to public law, all U.S. government personnel performing security-assistance tasks and functions in a country are under the direction and supervision of the U.S. ambassador.

Under FMS, U.S. government or government-contracted personnel are prohibited from performing defense services which involve combatant duties, including any training or advising duties that might engage them in combat. The president must report to Congress within 48 hours whenever significant hostilities or terrorist acts occur in a country in which U.S. personnel are performing security-assistance services.

Jurisdiction agreements

Each overseas security-assistance organization is set up according to an agreement between the U.S. and the host country. The legal and

criminal-jurisdiction status of SAO personnel is set forth in mutual-defense-assistance agreements, which vary from country to country. These agreements generally allow a degree of immunity somewhat less than that granted under full diplomatic immunity, yet greater than that offered under status-of-forces agreements. Because SAOs are usually considered extensions of the U.S. embassy, agreements general-

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ly provide for immunity from criminal jurisdiction of the host country.

The privileges and immunities accorded U.S. personnel under defense-assistance agreements vary from the significant degree offered members of the Joint U.S. Military Advisory Group-Korea, who are considered to be an integral part of the U.S. embassy, to those personnel serving in Saudi Arabia, where immunity is limited to specific personnel and does not apply to dependents at all.

While the level of immunity accompanying full diplomatic status is constant, lesser levels of diplomatic immunity vary according to rank and position. Each embassy maintains an accredited list which specifies the degree of immunity accorded particular positions. Newly assigned personnel should become familiar with this listing to ascertain the specific rights and privileges which the host country has allowed them, their dependents and their subordinates.

Immunity resides with the sovereign — not the individual. Regardless of which rights and privileges a person is accorded through any of the cited types of agreements, that immunity can be waived without the person's consent by the U.S. government, if such action is deemed to be in the best interests of the United States.

A nation's sovereignty is absolute and exclusive. The only limitations on sovereignty are self-imposed; they require the expressed consent of the state involved. The principal bases of jurisdiction to which the United States adheres are territorial and personal.

Through both bilateral and multilateral agreements, the U.S. maintains varying degrees of jurisdiction over its military forces stationed in foreign countries. It has agreements with approximately 60 sovereign states concerning the legal status of its diplomatic and nondiplomatic military personnel stationed in them. The agreements specify the rights and duties of both the U.S. and the receiving state. In addition to criminal jurisdiction, other items usually regulated are civil jurisdiction, claims, taxes, import duties, customs and procurement. It is not uncommon to have different types of agreements in effect simultaneously in a particular country. Thus, U.S. personnel of the same service, within the same country, may enjoy varying degrees of rights and privileges, depending on whether they are serving as an attache, with a SAO,

or in a tactical unit covered by a status-of-forces agreement.

Legal responsibilities

Security-assistance-training-team members and their dependents are subject to the terms of any agreements or memoranda of understanding between the host country and the U.S. government. Team members are given the same legal status, privileges and exemptions as technical personnel assigned to the U.S. embassy, consulate or security-assistance activity. Upon arrival of a team in a country, the SAO will ensure that personnel are thoroughly briefed on their legal status in the country. Teams are under the operational and administrative control of the SAO while in the country. The team chief, however, is solely responsible for the training mission. It is the responsibility of the SAO to offer all assistance possible so that the team can accomplish its mission. When status-of-forces agreements are in force, the letter of offer and agreement will specify that,

under the provisions of the SOFA, team members are considered members of the U.S. force. In the absence of a SOFA, a diplomatic agreement will provide that team members receive the same immunities specified for members of the administrative and technical staff by the Vienna Convention on Diplomatic Relations of 1961.

All DoD personnel, regardless of assignment, are prohibited from accepting (with limited qualification) any "gratuity" with respect to the performance of their responsibilities and duties. A "gratuity" is defined as any gift, favor, entertainment, hospitality, transportation, loan, any other tangible item or any intangible benefits. Examples include discounts, passes and promotional vendor training, given or extended to or on behalf of DoD personnel, their immediate families or households, for which fair market value is not paid by the recipient or the U.S. government.

The acceptance of a gratuity by DoD personnel or their families, no

matter how innocently tendered, may prove to be a source of embarrassment to the DoD, may affect the objective judgment of the DoD personnel involved and may impair public confidence in the integrity of the government. DoD personnel are prohibited from making or recommending any expenditure of funds or taking or recommending any action known or believed to be in violation of U.S. laws, executive orders or applicable directives, instructions or regulations. Generally, any person performing any duty whatsoever in connection with the security-assistance program, regardless of assignment, may not accept the tender of any gift or decoration from foreign governments for duty of this nature.



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Civic Action, Humanitarian and Civic Assistance, and Disaster Relief:

Military Priorities in Low-intensity Conflict

*Use of U.S.
military forces to
aid civilians in
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by
Lt. Col.
Rudolph C. Barnes Jr.

Civic action, humanitarian and civic assistance, and disaster relief all relate to the care of civilians, so why should they be of concern to the military?

The answer is that civilians have a significant impact on military operations in both peace and war. In wartime, civilians are obstacles to military combat operations. In peacetime military operations, however, civilians are objectives of military operations, since mobilizing public support is a major politico-military objective in low-intensity conflict, or LIC. Civic action, humanitarian and civic assistance (known as H/CA), and disaster relief are especially important in LIC since they can help mobilize the public support required for mission success.

During military operations the care and control of civilians is a command responsibility, and within the Department of Defense, U.S. Army Civil Affairs, or CA, personnel are responsible for civil-military operations and assisting the com-

mander to meet all legal obligations and moral responsibilities to the civilian population.¹

Civic action and H/CA are normally thought of as CA peacetime activities, but wartime care and control of dislocated civilians involves similar CA activities. In contrast to civic action and H/CA, disaster relief has not been considered a primary mission of U.S. military forces, except for National Guard units in domestic emergencies. But war certainly qualifies as a disaster, albeit an unnatural one, and CA has the mission to provide wartime disaster relief.² This CA mission could easily be adapted to provide a peacetime capability for disaster relief.

Caring for civilians is a combat-service-support function during wartime, but it becomes an operational priority in LIC, where public support is a primary mission objective. In recent legislation, the Goldwater-Nichols DoD Reorganization Act of 1986, Congress has given

H/CA and CA a high priority in LIC by designating them as "special-operations activities."³

Special operations are military operations conducted by specially trained DoD forces in pursuit of national military, political, economic or psychological objectives during wartime or peacetime.⁴ These specially trained DoD forces are assigned to the United States Special Operations Command and include the Army's Special Forces, Psychological Operations, Civil Affairs, Rangers and Special Operations Aviation units.⁵ It should be noted, however, that conventional forces can also conduct civic action, H/CA and disaster relief.

Peacetime civic action, H/CA and disaster-relief activities conducted in conjunction with military operations are normally components of the foreign-internal-defense mission which support counterinsurgency activities in LIC.⁶ Because of their political orientation, all FID activities must be closely coordinated with the Department of State through the local U.S. embassy, and unless there is a significant U.S. military presence, are under the operational control of the embassy country team. Civilian agencies represented on the country team, such as the United States Agency for International Development, or USAID, usually take the lead role in FID activities involving civilians, and this requires close coordination with military activities.

Public support

The ultimate objective in counterinsurgency and FID is to maintain political control, and effective political control requires the legitimacy of public support. Without a measure of public support, or at least public apathy, no insurgency can achieve legitimacy and is doomed to failure. Because CA is responsible for civilian support in military operations, it has the primary responsibility for mobilizing the public support necessary for legitimacy in LIC.⁷

Civic action has proven to be a major means of mobilizing public support for legitimacy in LIC. To paraphrase one of Mao's metaphors, civic action can help deny the insurgent fish a sea in which to swim. Civic action includes all projects which contribute to the economic, social or political development of an indigenous population. Referred to as military civic action when conducted by military forces, these projects are normally conducted by indigenous military forces, with U.S. forces providing essential resources, advice and assistance.

"... U.S. military operations should emphasize indirect advice and assistance, with severe constraints on the use of force ... While the use of military force is necessary for successful insurgency and counterinsurgency operations in LIC, civic action, H/CA, and disaster relief are equally important to provide the public support necessary for legitimacy."

Only indigenous forces can achieve the political legitimacy necessary for success in LIC, so U.S. military operations should emphasize indirect advice and assistance, with severe constraints on the use of force, which might undermine public support. While the use of military force is necessary for successful insurgency or counterinsurgency operations in LIC, civic action, H/CA, and disaster relief are equally important to provide the public support necessary for legitimacy.⁸

When part of FID, civic action,

H/CA and disaster relief are a combined effort of CA, PSYOP, SF and military-intelligence elements in support of counterpart indigenous forces. Each of these specialized forces has an important role in FID: CA is primarily responsible for mobilizing public support and coordinating military activities with civilian authorities; PSYOP is the military media for communicating with local civilians; SF focuses on teaching the martial arts of counterinsurgency to indigenous forces; and MI translates raw information into intelligence which drives effective counterinsurgency operations.

Legal issues

Civic action and H/CA in LIC became politically controversial in the early 1980s when U.S. forces on military exercises in Honduras built and left behind significant permanent improvements. Comptroller General opinions in 1980 and 1986 cited the United States Southern Command for mispending DoD organization-and-maintenance funds during military exercises for what amounted to foreign aid. In 1986 Congress responded to the criticism with legislation that both funded and restricted H/CA provided in conjunction with military operations.⁹

Civic action and H/CA are not legally distinguished, and the description of H/CA in the 1986 law includes traditional civic-action activities. The law is likely to create some confusion, because *civic action* is defined in defense doctrine but not by statute, and *H/CA* is defined by statute but not in doctrine. As a result, the relationship between the two concepts is unclear. The H/CA activities defined in the law are:

- medical, dental and veterinary care provided in rural areas
- construction of rudimentary surface transportation systems
- well-drilling and construction of basic sanitation facilities
- rudimentary construction and repair of public facilities.¹⁰



Courtesy Special Warfare Museum

Following U.S. military operations in Grenada, Army Civil Affairs personnel assisted the Grenadian government in a variety of civic-action projects.

Because Congress has made no distinction between civic action and H/CA, it would appear that Congress intended that the restrictions on H/CA also apply to civic action, unless funded under separate authority. This is likely to be the practical result, since the law now requires unified commanders to submit annual reports on all activities described in the statute, no matter how denominated within the command.¹¹

To continue to use O&M funds for civic action that is not otherwise authorized would risk antagonizing Congress and jeopardizing mission success. Unless and until distinguished by law, directive or doctrine, civic action should be considered synonymous with H/CA and subject to the same funding constraints.

A DoD directive has expanded the statutory definition of H/CA to include the following: disaster relief when requested by proper authorities, the transportation of humanitarian cargo, providing DoD excess property for humanitarian purposes, and the education and training of indigenous forces "... in military professionalism and leadership in

the context of democratic government and military-civilian relations for the purpose of improving the well-being of the host country population."¹²

The DoD directive seems to contradict language in the law which specifically prohibits the provision of H/CA (directly or indirectly) "... to any individual or group, or organization engaged in military or

"The DoD directive seems to contradict language in the law which specifically prohibits the provision of H/CA (directly or indirectly) '... to any individual or group, or organization engaged in military or paramilitary activity.' When there is a conflict, DoD policy must give way to the law."

paramilitary activity."¹³ When there is a conflict, DoD policy must give way to the law.

In addition to prohibiting aid directly or indirectly to indigenous military forces, the law also provides other conditions for H/CA: it must promote the security interests of both the U.S. and the supported country,¹⁴ promote the operational-readiness skills of U.S. and indigenous military forces,¹⁵ complement and not duplicate any other U.S. aid or assistance to the supported country,¹⁶ and be specifically approved by the Secretary of State.¹⁷ The last requirement reflects the fact that H/CA and most peacetime military operations are interagency activities with political objectives that supersede military objectives.

Background

Civic action and H/CA have proven to be important tools in achieving U.S. security objectives in LIC. Civic action was the central component of U.S. nation-building activities conducted by the Special Action Forces, known as SAFs, during the 1960s. There were SAFs in Asia, Latin America and Africa to support friendly governments threatened by communist insurgencies. These SAFs effectively integrated SF, CA and PSYOP in counterinsurgency support and were active until the early 1970s, when they were dismantled and withdrawn at the same time U.S. forces were withdrawn from Vietnam.¹⁸

Special Action Force - Asia was probably the most active of the SAFs; it sent teams of SF, PSYOP and CA personnel to advise and assist Philippine military forces in conducting military civic action. These combined U.S.-Philippine military civic-action programs included medical and engineering projects now categorized as H/CA. These civic-action programs helped mobilize public support for the government and its military forces, denying legitimacy to insurgents. It was not until after 1972, when SAF-Asia had been dismantled and

President Marcos had converted democracy into autocracy, that the New Peoples' Army began to achieve real success in the Philippines.¹⁹

More recently, following the intervention by U.S. forces in Grenada in 1983, CA Army Reserve personnel helped USAID and the Grenadian government with a school rehabilitation project that trained Grenadians in carpentry skills while they rehabilitated school buildings.²⁰ Since that time, CA reservists have provided civic action and H/CA throughout the Caribbean, and more projects are planned for that strategically important region under the new H/CA law.

While the Caribbean is important to U.S. security interests, even more attention has been focused on Central America, where the U.S. Southern Command sponsors more H/CA programs than any other unified command. Denominated as military civic action, civic assistance, population and resource control, and civil defense, these SOUTHCOM projects "... seek to achieve the political, social, economic, and psychological objectives of revolution. These, rather than military objectives, are principles for a successful counterinsurgency effort."²¹

Forms of H/CA

In SOUTHCOM a distinction has been made between civic action and civic assistance; the latter is considered to be assistance given to an incumbent government to improve the management skills of indigenous political leaders. SOUTHCOM also distinguishes two types of civic action: mitigating and developmental. *Mitigating civic action* is more common, usually medical and construction projects that emphasize short-term benefits. It is analogous to the provision of emergency assistance for dislocated civilians in wartime, a limited capability which depends upon government agencies to be responsible for long-term care. *Developmental civic action* projects are long-term and require continu-

ous support from the indigenous government to be effective.²²

While H/CA is usually thought of in support of counterinsurgency or FID, it can also be in support of insurgency or unconventional-warfare operations. Direct military aid to insurgents, however, is a violation of sovereignty and an act of war against the incumbent government. To avoid the issue, Congress has been willing to consider H/CA for insurgents or resistance forces in Nicaragua and Afghanistan in lieu of military aid.²³ The distinction between H/CA and military aid is rather contrived, however, since H/CA frees other unrestricted

resources for military purposes. The law providing for H/CA in conjunction with U.S. military operations, however, makes it clear that such H/CA cannot be in support of military or paramilitary activities, either directly or indirectly.²⁴

Disaster relief

Disaster-relief assistance is a surge form of H/CA; it is emergency H/CA required for large numbers of civilians dislocated by disaster. Unlike civic action and H/CA, disaster relief has not been a major military capability in LIC, probably because it is the primary responsibility of the Federal Emergency



Courtesy Special Warfare Museum

U.S. forces in Central America are involved in a number of civic-action projects, including those which provide medical assistance.

Management Agency, or FEMA, in the U.S. and of the Department of State overseas and has traditionally been provided by civilian agencies such as national Red Cross or Red Crescent relief organizations. A precedent for military involvement is the use of National Guard units in times of domestic emergencies.

In the hostile environment of LIC, military forces may be required to assist civilian agencies in providing disaster relief. In fact, most governments in developing countries must rely on their military forces to provide disaster relief; if they are not up to the task when disaster strikes, the incumbent government forfeits legitimacy to opposition forces. Insurgent groups throughout Latin America have been the beneficiaries of natural disasters there, primarily due to the inability of incumbent governments to provide adequate disaster relief when needed. While U.S. civilian disaster-relief agencies can help, they cannot advise and assist indigenous military forces in LIC as well as can those U.S. military forces which are assigned the FID mission. Proposed Army doctrine recognizes the value of disaster relief in LIC and lists it as a collateral

capability of Special Forces.²⁵

While disaster relief has not been a major mission for U.S. military forces during peacetime, its wartime counterpart has been. International law requires that an occupying military power care for dislocated civilians during wartime,²⁶ and Army doctrine assigns CA forces the responsibility for providing such disaster relief.²⁷ The most recent experience of U.S. CA forces with wartime disaster relief was with military government in World War II. In current CA doctrine, military government in occupied territory is a part of the CA civil-administration mission, as is advising and assisting friendly governments in providing essential public services. In either case, CA disaster relief during wartime is little different from that of peacetime; both involve providing emergency care for large numbers of dislocated civilians.²⁸

In recent years, earthquakes, violent storms and mud slides have threatened the legitimacy of friendly governments in Latin America and other strategically important areas around the world. Given the debilitating effect of natural disasters upon weak governments in

developing countries, a capability for U.S. forces to provide disaster relief would be a valuable complement to other security-assistance capabilities, not to mention the capability to assist local National Guard units and FEMA with domestic disaster relief. CA forces represent that disaster-relief capability, and the new H/CA legislation provides the resources and authority to make a CA capability for peacetime disaster relief a reality.

The United States Pacific Command has recognized the potential of CA forces to support its security-assistance mission in the South Pacific. Elements of the 351st CA Command of Mountain View, Calif., have assisted USPACOM with disaster planning for strategically important island nations regularly threatened by typhoons. Recent legal memorandums of understanding between the Department of Defense and those civilian agencies with primary responsibility for disaster relief provide the authority for USPACOM to use military personnel for disaster relief.²⁹

Civil Affairs units are well-suited to plan and implement disaster relief with their 20 functional specialties,³⁰ one of which is caring for civilians dislocated by the ravages of war. Current Army doctrine requires that the dislocated-civilian CA functional specialty:

- provide emergency care and evacuation
- establish or supervise the operation of temporary or semipermanent camps
- resettle or return civilians dislocated by war to their homes
- advise and assist host-country and U.S. agencies on camps and relief measures for dislocated civilians.³¹

While the doctrine refers to a wartime capability, it is equally applicable to disaster relief in LIC or within the U.S.

Disaster-relief requirements

In spite of this doctrine, there is currently no CA capability pre-



Courtesy Special Warfare Museum

This photo shows the military government office in Kaiserslautern, Germany, in 1945. Following WWII, Civil Affairs forces helped care for large numbers of dislocated civilians.

pared to assist dislocated civilians in an emergency, and because assistance for dislocated civilians has been viewed as a wartime CA mission, there has been no effort to develop an emergency capability for peacetime military operations. During peacetime disasters, FEMA has been reluctant to use CA units in the U.S. and the Department of State reluctant to request military assistance overseas. A peacetime disaster-relief capability would require quick response by CA units, which is not required by the wartime mission and not currently available. The obligation to care for dislocated civilians in wartime arises only after U.S. forces assume control of contested territory, allowing ample time after mobilization for CA reserve forces to prepare for the mission.

When CA forces were deployed to care for large numbers of dislocated civilians in World War II, they had little advance training and took little organic equipment and supplies with them; they had to improvise with what they could find on the scene. The priority demands of combat forces in World War II required that CA personnel rely on indigenous supplies for their needs, and such would likely be the case in any future war.

In addition to caring for dislocated civilians outside the combat zone, CA must also be able to minimize civilian interference with military operations inside the combat zone.³² The emphasis of this wartime CA mission, known as command support, is to prevent civilians from becoming obstacles to combat operations rather than to gain civilian support for political objectives. In combat, effective population-and-resources control can be the difference between victory and defeat; large groups of civilians at the wrong place can be war stoppers.

The contrasting emphasis of CA wartime and peacetime operations reflects the contrasting role of civilians in each environment. In wartime, military objectives predomi-

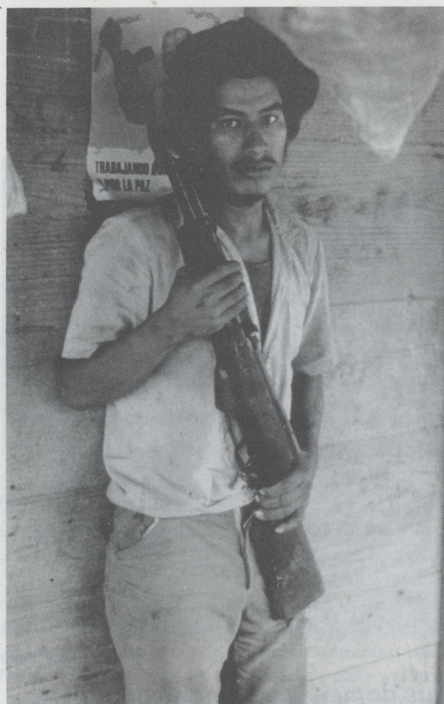


Photo copyright Morgan Smith

U.S. law prohibits aid directly or indirectly to indigenous military forces such as this Contra fighter.

nate, and civilians are more liabilities than assets to combat operations. The opposite is true in LIC, where mobilizing public support is essential to mission success. While the CA wartime mission for dislocated civilians doesn't have the priority of its comparable LIC mission, it nevertheless deserves a higher priority for readiness than it currently enjoys. The development of a CA capability to provide peacetime disaster relief would contribute to CA readiness for its wartime mission, and such readiness training is a requirement of the Goldwater-Nichols legislation.³³

An effective capability to provide disaster relief during peacetime would require that CA forces have and maintain those emergency supplies and equipment necessary to care for large numbers of dislocated civilians, including medical, sanitation, food and clothing supplies, and even temporary shelter. To be effective, CA disaster-relief personnel and their equipment would have to be capable of reaching disaster sites anywhere in the world

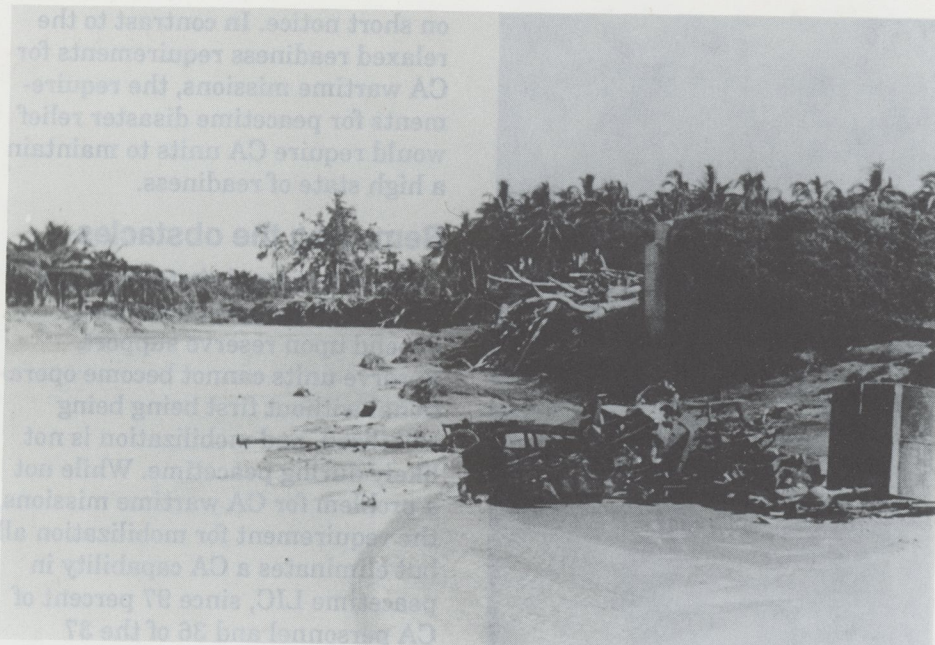
on short notice. In contrast to the relaxed readiness requirements for CA wartime missions, the requirements for peacetime disaster relief would require CA units to maintain a high state of readiness.

Removing the obstacles

There is a legal obstacle to any CA peacetime operations that depend upon reserve support. Reserve units cannot become operational without first being mobilized, and mobilization is not likely during peacetime. While not a problem for CA wartime missions, the requirement for mobilization all but eliminates a CA capability in peacetime LIC, since 97 percent of CA personnel and 36 of the 37 Army CA units are in the reserve component. For duty other than training, CA reservists must volunteer either for special projects with active-component units or for extended active duty. Especially in domestic disasters, the real value of CA would be to provide emergency essential services until local governments are able to resume their activities.

The peacetime CA missions of civic action, H/CA and disaster relief provide excellent training for CA wartime readiness, but these peacetime operations are much more than wartime training missions. Security-assistance and FID missions should stand on their own as military capabilities essential to protect our national-security interests in peacetime. The DoD CA Master Plan developed by USSOCOM has identified the statutory requirement for mobilization as a deficiency in the effective utilization of CA units in peacetime and has recommended action to correct the problem.³⁴

In addition to removing legal restrictions on the use of CA reserve units, changes in the CA force structure will also be needed to provide an effective capability for civic action, H/CA and disaster relief. The DoD CA Master Plan recommends that the single active-



U.S. Army photo

Disasters such as the cyclone which left this damage on Guadalcanal in 1986 often require the use of military personnel for disaster-relief activities.

component CA unit, the 96th CA Battalion, be expanded to provide an increased capability for developmental (long-term) civic-action projects. For disaster relief the 96th CA would need a quick-reaction, short-term capability to provide emergency disaster relief until CA reserve units could deploy with their more specialized personnel and equipment to care for dislocated civilians.

The DoD CA Master Plan and the proposed CA Table of Organization and Equipment are consistent with such changes in the force structure, emphasizing the need for an expanded active-component CA capability and a reserve capability oriented to peacetime LIC missions.³⁵ Current CA doctrine also supports the expanded force structure to conduct the CA peacetime operational missions of FID (support for counterinsurgency), unconventional warfare (support for insurgency), and civil administration (support for or the provision of government services); these CA missions specifically include civic action and H/CA, and by implication, disaster relief.³⁶

To fulfill their peacetime and

wartime mission requirements, CA units are structured to have those specialized functional skills required for civic action, H/CA and disaster relief. It is the responsibility of USSOCOM to provide the training and equipment to insure a CA capability in LIC, which includes the CA missions of FID, unconventional warfare and civil administration. A capability to conduct these CA missions should include the capability to provide civic action, H/CA and disaster relief.

The requirements of the 1986 legislation on H/CA reflect the interest of Congress in these activities, but there are additional legal requirements and overlapping laws that create five categories of H/CA in military operations.³⁷ Through these laws Congress has supported both military training and humanitarian assistance in LIC, but it required that they be kept separate. Because U.S. military operations in LIC are usually protracted, continued congressional support is required, and congressional support depends upon U.S. forces acting in compliance with all applicable laws, especially their own.

The legal complexities surrounding the use of civic action, H/CA and disaster relief underscore the commander's need for competent legal support to ensure operational legitimacy. The operational-support role of the lawyer in LIC is even more important than in conventional operations because legitimacy is the center of gravity in LIC, and legal compliance is an essential element of legitimacy.³⁸

Summary

A military capability to conduct civic action, H/CA and disaster relief in LIC would help the U.S. achieve its national-security objectives by assisting friendly governments to mobilize the public support necessary to isolate and neutralize insurgent threats. Civic action and H/CA have proven their worth in counterinsurgency operations since the 1960s, but disaster relief has not been considered a military capability in LIC. The concept of military forces caring for large numbers of dislocated civilians is not new, however, and is currently a CA wartime mission.

To provide an effective CA capability in LIC, CA personnel must be able to advise and assist indigenous forces in providing sustained military civic action and H/CA in conjunction with civilian agencies as well as SF, MI and PSYOP personnel. CA personnel should also have the capability to provide quick-reaction, short-term disaster relief until local government can assume responsibility for dislocated civilians in the disaster area. In addition to providing disaster relief, CA personnel should also be able to assist friendly governments with their specialized civilian skills when needed.

By creating an effective military capability to provide civic action, H/CA and disaster relief in LIC, the U.S. will be better able to protect its security interests in peacetime, while insuring the readiness of its wartime military capability. The effective use of any such capability

is subject to complex laws, however, which make the operational-support role of the military lawyer essential to mission success. ✕

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cate and civil affairs legal officer for Special Action Force - Asia. He holds a BA from the Citadel, an MPA and a JD from the University of South Carolina, and is a graduate of the Army Command and General Staff College.

Notes:

¹ Current Army CA doctrine is contained in U.S. Department of the Army FM 41-10, *Civil Affairs Operations* (Washington, D.C.: Government Printing Office, 1985). For a discussion of CA legal support, see Barnes, "Legitimacy and the Lawyer in LIC: Civil Affairs Legal Support," *The Army Lawyer* (October 1988), p. 5.

² FM 41-10, Chapter 5 and Appendix C.

³ The 10 special-operations activities assigned to the U.S. Special Operations Command by Title 10, U.S. Code, Section 167(j) are: direct action, strategic reconnaissance, unconventional warfare, foreign internal defense, Civil Affairs, Psychological Operations, counterterrorism, humanitarian assistance, theater search and rescue, and other activities.

⁴ Special operations may be conducted during periods of peace or hostilities. They may support conventional operations, or they may be prosecuted independently when the use of conventional forces is either inappropriate or infeasible. — *Joint Chiefs of Staff Pub. 1, Department of Defense Dictionary of Military and Associated Terms* (Washington, D.C.: 1987), p. 339.

⁵ For a discussion of special-operations forces and USSOCOM in LIC, see Gen. James J. Lindsay, "USSOCOM: Strengthening the SOF Capability," *Special Warfare* (Spring 1989), pp. 5-7; also Barnes, "The Politics of Low Intensity Conflict," *Military Review* (February 1988), pp. 8-10.

⁶ *JCS Pub. 1* defines FID as participation by civilian and military agencies of a government in any of the action programs taken by another government to free and protect its society from subversion, lawlessness and insurgency. For CA support of FID, see FM 41-10, Chapter 3.

⁷ For a discussion of the importance of civilians and public support in LIC, see Barnes, "Civil Affairs: A LIC Priority," *Military Review* (September 1988), p. 38.

⁸ FM 41-10, pp. 1-6, 1-7. For a discussion of military civic action in Latin America, see Lt. Col. John T. Fishel and Maj. Edmund S. Cowan, "Civil-Military Operations and the War for Moral Legitimacy in Latin America," *Military Review* (January 1988), p. 36.

⁹ 10 USC §40 et seq.

¹⁰ 10 USC §405.

¹¹ 10 USC §404.

¹² Department of Defense Directive, Subject: Humanitarian and Civic Assistance Provided in Conjunction with Military Operations.

¹³ 10 USC §401(c).

¹⁴ 10 USC §401(a) (1).

¹⁵ 10 USC §401(a) (2).

¹⁶ 10 USC §401(b).

¹⁷ 10 USC §402.

¹⁸ Charles M. Simpson III, *Inside the Green Berets: The First Thirty Years; A History of the U.S. Army Special Forces* (Novato, Cal.: Presidio Press, 1983), Chapters 8, 15 and 18.

¹⁹ Edgar O'Ballance, "The Communist New People's Army," *Military Review* (February 1988), p. 11.

²⁰ Barnes, "Grenada Revisited: Civil Affairs Operates in Paradise," *The Officer* (July 1985), p. 14.

²¹ Fishel and Cowan, *supra* at note 8.

²² *Ibid.*

²³ Benjamin P. Dean, "Self-Determination and U.S. Support of Insurgents: A Policy-Analysis Model," *Military Law Review* (Fall 1988), pp. 207-211, 218.

²⁴ 10 USC §401(c).

²⁵ Humanitarian assistance and disaster relief are considered collateral capabilities of Special Forces in LIC. See FM 31-20, *Special Forces Operations* [Coordinating Draft] (Washington, D.C.: Headquarters, Department of the Army, August 1988), pp. 3-8 and 3-9.

²⁶ FM 27-10, *The Law of Land Warfare*, July 1956, Chapters 5 and 6.

²⁷ FM 41-10, p. 1-1.

²⁸ *Ibid.*, Chapter 5.

²⁹ The authority to conduct international disaster assistance is provided by the Foreign Assistance Act (22 USC §2292) and is the province of the Department of State. Executive Order No. 12163 gives the USAID field agency responsibility for such disaster relief. Under the provisions of the Economy Act (31 USC §1535), civilian agencies such as USAID may agree to have military personnel provide services on a reimbursable basis. There is no requirement to reimburse for personnel expenses, however, if they are incidental to training. When CA personnel are involved in disaster relief, it is training for their wartime mission, so that there is no requirement for USAID to reimburse DoD for personnel costs. The Office of The Staff Judge Advocate, USPACOM, has prepared legal opinions which support the interagency transactions which authorize USAR CA personnel to provide such disaster-planning assistance.

³⁰ The 20 Civil Affairs functional specialties are: civil defense, labor, legal, public administration, public education, public finance, public health, public safety, public welfare, civilian supply, economics and commerce, food and agriculture, property control, public communications, transportation, public works and utilities, arts, monuments and archives, civil information, cultural affairs, and dislocated civilians. FM 41-10, Appendix A.

³¹ *Ibid.*, Appendices A and G (Dislocated Civilian Operations).

³² FM 41-10, Chapter 2.

³³ 10 USC §401(a) (2).

³⁴ DoD CA Master Plan Coordinating Draft prepared by USSOCOM, February 1988, Chapter 5.

³⁵ CA Master Plan and proposed CA TOE 41717LOOO, *CA Detachment (General Support), CA Battalion, Foreign Internal Defense and Unconventional Warfare*.

³⁶ FM 41-10, Chapters 3, 4 and 5.

³⁷ The following are summaries of the five categories of H/CA applicable to military operations:

1) Specific funds are designated for H/CA from the annual appropriations of each service under 10 USC §401 et seq., and the Secretary of State or his designees approve H/CA projects from those proposals submitted by unified commanders in their areas. See 10 USC §401-406; also Notes 10, 12-17 above.

2) The new law does not preclude H/CA conducted under the Stevens Amendment, which provides for H/CA in conjunction with JCS-approved exercises. The conditions for H/CA under the Stevens Amendment are the same as under 10 USC §401 et seq., except that no approval from the Secretary of State is required. See FY 89 DoD Appropriations Act (PL 100-202), Section 8063.

3) The funding of "de minimus" H/CA activities from O&M funds during JCS-approved exercises is still allowed, but to qualify they must be commonplace on foreign exercises for decades. For instance, a CA unit doctor's brief examination and limited medication would qualify as "de minimus," but not the dispatch of a medical team for mass inoculations. Likewise, opening an access road for several hundred yards would probably qualify, but not paving a roadway. See *Conference Report: FY 87 DoD Authorization Act*, pp. 467, 468.

4) The Denton Amendment allows the Secretary of Defense to approve the transportation, without charge, on a space-available basis, of humanitarian-relief supplies which can be distributed by a U.S. agency or private organization, so long as the supplies do not benefit a military organization. See 10 USC §402.

5) The Secretary of Defense may authorize payment of reasonable and proper costs incurred by a developing country as a direct result of its participation in an exercise with U.S. forces. This could include rations, fuel and transportation, but not pay and allowances which are normal recurring costs of the developing country. See 10 USC §2010 and *Conference Report: FY 87 DoD Authorization Act*, p. 179.

³⁸ FM 41-10, pp. 1-1, 1-2. See Note 1, above; see also Barnes, "Special Operations and the Law," *Military Review* (January 1986), p. 49.

"But It's Only Civilian Property ..."

In war, destruction of enemy and civilian property is common, but even then, soldiers' actions are governed by law.

by
retired Maj. Karl F. Ivey

War is an awesome thing to comprehend. Destruction of enemy military facilities and civilian property is common, and it is that image we visualize when we think of combat.

Soldiers know that there are some clear-cut rules that cover how we behave in war — don't attack hospitals or ambulances, don't attack undefended places, etc. But few realize that there are specific rules which state how soldiers must treat enemy government and private property during and after hostilities. These rules are based upon the concept that we wage war against enemy governments or forces, not upon individual citizens or towns.

According to the rules, soldiers can treat property in the following ways:

Destruction — Any kind of property may be destroyed if necessary for combat operations. Property can also be destroyed in preparation for assault and after the enemy has fled an area. No payment is neces-

sary to the owners of the property when the destruction is required for military operations, including occupation responsibilities such as destruction of former military fortifications and destruction for health, sanitation or safety reasons.

Confiscation — Confiscation is the taking of custody and title to enemy government movable property. Enemy government movable property can be confiscated if it is directly or indirectly usable by our armed forces. Enemy real estate cannot be confiscated. Civilian property can be confiscated if it is found on the field of battle and has been used by the enemy in its war effort. Such property loses its protected status and is called "booty of war," but the enemy must actually have used the civilian property to further their fighting before it can be confiscated. No payment is required for confiscated property.

Seizure — Seizure is the taking of enemy civilian property capable of direct military use by armed forces in combat. The property can be

used in the war effort or occupation, or it may be moved and used elsewhere. Payment is required for seized property. Payment is made at the end of the war when a peace treaty is signed, unless the seized item is returned to its owner.

Requisition — Requisition is the taking of movable or immovable property only for occupation needs. It is much like a forced lease of the property. Requisitioned property can only be used in the occupied territory where it was originally found. The owner of the property must be compensated for requisitioned property as soon as possible. Payment can be held in trust (escrow) for owners who cannot be located. Almost any kind of property can be requisitioned as long as it is needed for the occupation. Occupying forces use local government officials and Civil Affairs personnel to locate property which they need to requisition.

Control — All property in occupied territory can be controlled to the degree necessary to prevent its misuse by the civilian population. An example of a control would be the requirement for all vehicle owners to park their cars in a designated area from sundown to sunup. The commander of occupation forces has the duty to protect public safety and maintain law and order. Thus, he can order when and how property may be used, and any property loss caused by a control is not compensable.

Definitions

In discussing treatment of property and in using the property-control matrix on Page 44, most of the terms we will use are self-explanatory. There are some terms, however, which require definition:

Usufruct — Usufruct is the right of an occupier to use enemy government real estate at no cost. The word literally means "use of the fruits," so the occupier can use the land and its benefits without having to pay compensation. Usufruct extends to any enemy government

property usable in occupation duties. The occupier must not allow the property to deteriorate or be degraded; however, there is no duty to upgrade the property. Recreation facilities seized from the enemy, as well as military compounds, are examples of property subject to a usufruct.

Municipal property — Generally enemy-government movable property does not have the protections that civilian or privately owned property has. All enemy movable property directly or indirectly usable by our armed forces can be

confiscated and becomes the capturing forces' property. Municipal property, however, is owned by the citizens of a town and is treated like private property. It cannot be confiscated except when it has been used by enemy forces during their combat activities.

Questioning ownership — Property whose ownership is in question or which cannot be determined to be owned by the enemy government is best considered to be private property, since that will afford the property the most protection. This philosophy differs from



Courtesy Special Warfare Museum

This catholic church in the Capua area of Italy was destroyed during the fierce battle for the Volturno River in 1943.

Property Control Matrix

	DESTRUCTION	CONFISCATION	SEIZURE	REQUISITION	CONTROL
PUBLIC MOVABLE PROPERTY (taken of field of battle)	1	2	12	12	13
PUBLIC MOVABLE PROPERTY (susceptible of military use)	1	5	12	12	13
PUBLIC MOVABLE PROPERTY (not susceptible of military use)	1	9	9	9	13
PUBLIC IMMOVABLE PROPERTY	1	6	6	12	13
MUNICIPAL MOVABLE PROPERTY	1	4	10	11	13
MUNICIPAL IMMOVABLE PROPERTY	1	14	8	11, 14	13
PRIVATE MOVABLE PROPERTY	1	7, 3	10	11	13
PRIVATE IMMOVABLE PROPERTY	1	7, 14	8	11, 14	13

Property Control Matrix Rules

- Property may be destroyed under the rules of military necessity. (See Paragraph 56, FM 27-10, *The Law of Land Warfare*.) It may be destroyed for sanitary or safety reasons even after the battle. Any enemy military facilities or equipment can be destroyed to prevent future misuse.
- Paragraph 59a, FM 27-10, states, "All enemy public movable property captured or found on a battlefield becomes the property of the capturing State."
- Private property taken on the field of battle believed to have been used by enemy troops to further the fighting is subject to confiscation as booty of war — it has forfeited its right to be treated as private property.
- City-owned movable (municipal property) is treated like private property and may not be confiscated unless found on the battlefield after its use by the enemy.
- Paragraph 1, Article 53 of the 1907 Hague Conventions allows confiscation of public movable property which is susceptible of direct or indirect military use. Reasoned judgment dictates that the occupying forces should confiscate only those items necessary for military operations.
- Article 55 of the Hague Conventions allows the occupant only a usufruct over public immovable property. The right to receive the benefits from and the use of the property means no payment is due for the usufruct, but the property must be maintained by the user. Example: a university dormitory may be taken over by occupying forces for use as a BOQ.
- Article 46 of the Hague Conventions prohibits confiscation of private property not taken on the field of battle.
- Paragraph 407, FM 27-10, prohibits seizure of private immovable property, but if the immovable property is an essential part of the seized movable property, e.g., telegraph and telephone offices and equipment, transportation maintenance areas, etc., then seizure of even the immovable property is allowed. See Note 9.
- This is a very limited class of property and is sometimes not mentioned. It would include such things as court, property, banking and other valuable records, museum or cultural property, zoo animals, etc. There is no possible military use, thus no reason to confiscate or seize it. It may be requisitioned under limited circumstances and certainly must be controlled to prevent its damage.
- Seizure of private movable property is generally limited to any means used to transmit news (CB radio, telephone, telegraph, radio/TV stations, printing plants), means of transportation (including draft animals, weapons and materials-handling equipment), and items directly usable by the military, such as arms, ammunition, explosives, binoculars, armored vests, gas masks, etc. See Article 53 of the Hague Conventions. Other types of private movable property are not subject to seizure.
- Almost anything needed for the occupation forces may be requisitioned. See Paragraph 412, FM 27-10.
- Since these categories of property are subject to confiscation or a usufruct, it would be impractical to apply lesser forms of control which would require some form of compensation for use of the property.
- All property is subject to some form of control by the commander to prevent its use by or for the benefit of the hostile forces or in a manner harmful to the occupant forces. It can also be controlled for preservation and returned to the owner.
- Real estate or other private immovable property cannot be confiscated by occupying forces, since confiscation implies that full title to the property has passed to the confiscating power without any compensation being required. It may, however, be requisitioned or controlled.

the harsh method of treating property found in Paragraph 394c, Field Manual 27-10, *The Law of Land Warfare*, but you are never wrong in treating property better than the minimum requirements.

Need for receipts — Whenever property is taken from a civilian, as when it is being seized or requisitioned, a receipt must be given to the owner. It is essential that the receipt show the condition of the item and the unit taking or using the property. This will allow finance and claims personnel to make correct payment for the property. Remember that our efforts to overcome the enemy will be greatly affected by how we treat enemy civilians and their property. Callous disregard and abuse by occupying military forces can cause civilians to be hostile and frustrate our efforts in occupation. Giving a receipt shows that we will make good on our responsibilities toward civilians.

Property control matrix

The property-control matrix can help soldiers, planners and leaders resolve property-control questions. The chart and list of rules has been devised for quick reference. It can be included with reference materials or reproduced for issue to detachment or squad leaders. On the left is a vertical listing of the various types of property: public

movable and immovable, municipal movable and immovable, and private movable and immovable. To use the chart, find the type of property in question. Read to the right to find the types of treatment which apply to that property. The numbers in the blocks refer to specific rules below the matrix which govern each type of treatment.

Use this example: Your troops find an abandoned delivery truck for a local commercial bakery in a ditch; there are enemy ration boxes in the rear. The vehicle has been shot a few times but is serviceable and can easily be pushed out of the ditch. You need extra transportation for your troops. Can you confiscate or seize the truck?

Look at the matrix. On the left you will see the different classifications of property. The truck is a privately owned (it belongs to a commercial bakery) and is movable property. This places it on the seventh line down. Move to the right. The first column pertains to destruction. You want to use the truck, not destroy it, so you move to the next column, confiscation. Rules seven and three apply, and state that you may confiscate the bakery truck, since you have reason to believe that the enemy used the truck in their combat against you (it was taken on the field of battle from the enemy). Thus, this privately

owned property loses its protected status; it is considered the same as enemy movable property and can be confiscated as booty of war.

You see by checking the next column that you could seize the truck, but that would require returning the truck or paying the owner at the end of hostilities. Confiscation is better for the U.S. government because it allows us to take title to the truck without having to pay anyone. Use the matrix to see how you would treat a privately owned radio station, a mountain resort used as an R&R center by the enemy, and a city bus line.

Use of force in combat must be tempered so that the effects of our activities on the civilian population prevent unnecessary suffering. This will, in return, help us obtain peace and gain popular support for our political objectives. Treating civilian property correctly reinforces in the minds of the people that their best hope for the future is with us and our allies. ✕

Retired Maj. Karl F. Ivey was the command judge advocate for the JFK Special Warfare Center and School until his retirement in 1988. He currently has a private law practice in Tennessee.

Spetsnaz Engineers in the Great Patriotic War

Spetsnaz combat-engineer capabilities more than 40 years ago played an important role in the Soviet Army's deep battle against the Germans.

by Maj. William H. Burgess III

The doctrinal lineage of modern *Spetsnaz*, the Soviet special-purpose forces, has many roots. Most famous among its ancestors are the special-designation forces of Soviet state security (NKVD/KGB) and military intelligence (GRU) which saw action in the Russian Civil War, the 1920 Russo-Polish War, the Spanish Civil War, and the Great Patriotic War (World War II). Often overlooked is the strong strain of combat-assault engineering in the *Spetsnaz* bloodline.

Rear-area engineer *razvedka* (reconnaissance) and demolition operations at the tactical and operational levels of war are long-standing aspects of Soviet military doctrine and practice.¹ Such activities are part of the Soviet Army's long history of innovation and specialization to meet battlefield engineering demands. Faced with unique engineering requirements, the Soviets have often tailored existing organizations or created entirely new formations as the situation dictated.

In the late 1920s, for example, the Ukrainian Military District organized a special partisan task force charged with the demolition of critical facilities and commodities along the border with Poland and Rumania as a wartime contingency. According to one of the members of this force, Ilya Grigorevich Starinov,² the task force was responsible for development of demolition technology (possibly including some form of barrier-penetration study), establishing contingency caches of explosives, and training special teams to carry out demolition tasks.

Primary targets of these teams were the key points and rolling stock of the Soviet rail system, their objective being to deny use of this system to an invading enemy.

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According to Starinov, more than 60 such demolition teams with an average strength of 23 persons each (including some females) were trained, involving approximately 1,400 personnel. Every demolitions expert (miner) was also a parachutist, radio operator and master of camouflage (*maskirovka*).³

In fall 1932, Starinov and some of his personnel jumped into the Leningrad Military District on an exercise to demonstrate their skill in operations in the enemy rear. Their mission was to capture a headquarters and destroy transportation facilities. They placed 10 mines on a 10-km stretch of track (one mine blew up under the wheels of a commuter train before they could remove it), caused a panic in a village with the detonation of three incendiary practice mines, and generally created a stir in the exercise headquarters. At one point, Starinov was personally ejected from the exercise, but he was subsequently reinstated.⁴

Although primarily an engineering effort, this program was closely related to the GRU's creation of special partisan cadre who would conduct stay-behind operations in the enemy rear in the event of invasion. Gradually, however, the threat of foreign invasion subsided, conventional "deep-battle" theorists replaced the advocates of partisan warfare as primary defense of the Russian Revolution, and Starinov and his fellow demolitionists were absorbed into the Red Army. However, the partisan program was destroyed, and most of the personnel associated with it were killed during Stalin's purges in the late 1930s,⁵ possibly because Stalin feared the program was a threat to his own regime.

Engineer *Spetsnaz* in combat

Nonetheless, Starinov (as a military engineer, 3rd class) and others with backgrounds in special-operations demolitions did see action during the Spanish Civil War of

1936-1939, when their skills were employed in the 14th Special Corps and its predecessor units. The Soviets made good use of the combat-engineer skills of veterans of the 14th. In July 1941, shortly after the outbreak of war with Germany, Starinov and other Spanish Civil War *Spetsnaz* combat-engineering veterans established and ran the GRU's Operations Training Center of the Western Front, a main GRU

"Throughout the war, Spetsnaz combat-engineer units made significant contributions to delaying and blocking enemy advances, defeating fortified enemy positions, disrupting the movement of enemy reserves, and diverting front-line troops to rear-area security ... Most were committed at the operational level to improving defensive belts around critical terrain features and population centers during the German offensives at the beginning of the war ..."

sabotage school. In April 1942, Starinov and other Spanish Civil War veterans were also instrumental in creating the first major *Spetsnaz* engineer unit of the war, the 5th Separate *Spetsnaz* Engineer Brigade.⁶

Throughout the war, *Spetsnaz* combat-engineer units made significant contributions to delaying and blocking enemy advances, defeating fortified enemy positions, disrupt-

ing the movement of enemy reserves, and diverting front-line troops to rear-area security through missions conducted in enemy rear areas. Most were committed at the operational level to improving defensive belts around critical terrain features and population centers during the German offensives at the beginning of the war, and in penetrating and clearing enemy fortified zones when the Soviets went on the counteroffensive.

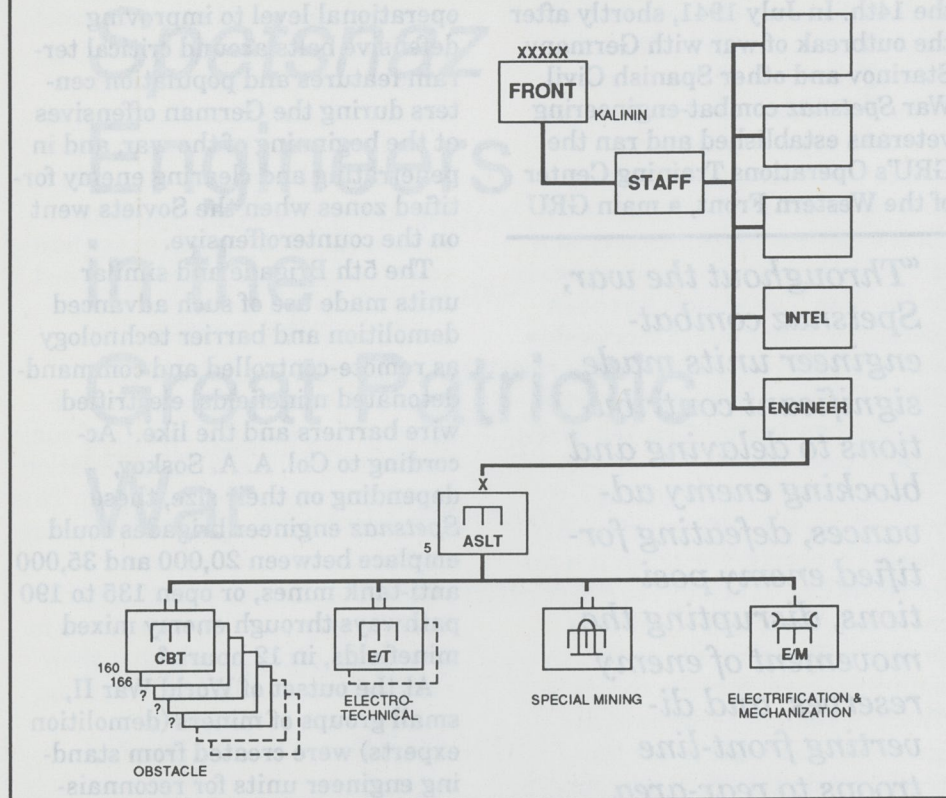
The 5th Brigade and similar units made use of such advanced demolition and barrier technology as remote-controlled and command-detonated minefields, electrified wire barriers and the like.⁷ According to Col. A. A. Soskov, depending on their size, these *Spetsnaz* engineer brigades could emplace between 20,000 and 35,000 anti-tank mines, or open 135 to 190 pathways through enemy mixed minefields, in 12 hours.⁸

At the outset of World War II, small groups of miners (demolition experts) were created from standing engineer units for reconnaissance and "diversionary" activities against fortifications and lines of communication in the enemy rear.⁹

By mid-1942, such units were active on all Soviet fronts. In the offensive in the Moscow area, reconnaissance-miner detachments of three to five men each were created in all combat-engineer and engineer battalions. These detachments were sent into enemy rear areas on missions lasting several days, demolishing bridges and road beds on highways and railroads, destroying enemy equipment, killing enemy soldiers, and collecting engineer information and other intelligence. In February 1942, for example, miners of the Western Front destroyed five bridges and planted 720 mines in the enemy rear.

In June 1942, the 160th and 166th Engineer Obstacle battalions of the 5th Brigade, then commanded by Col. F. B. Ab, were assigned activities in the enemy rear on the Kalinin Front. In all, 159 teams

5th Separate Spetsnaz Engineer Brigade



from the 160th and 166th were sent into the enemy rear, where they blew up 32 enemy trains, five railroad and highway bridges, 32 automobiles and an ammunition dump, and killed more than 600 enemy soldiers.

Guards-miners

Soviet effectiveness in reconnaissance and diversion against enemy lines of communication, or LOCs, and fortifications increased with the August 1942 creation by edict of the People's Commissariat of Defense of the USSR of specially trained separate guards battalions of miners (*otdelnyy gvardeyskiy batal'on minerov*, abbreviated OGBM).

By October 1942, there was one such battalion in every operational front and one brigade in Stavka reserve.¹⁰ The utilization of such battalions in the enemy rear was controlled from the headquarters of the chief of engineer troops of each

front, which closely coordinated such activities with the headquarters of the partisans of the *oblast* (republic) on whose territory the front was operating. In the years 1943-1944, guards-miners derailed 576 trains and five armored trains, blew up approximately 300 tanks and self-propelled guns, 650 wheeled vehicles and armored cars, more than 300 rail and highway bridges, and killed or wounded thousands of enemy soldiers.¹¹

OGBM troops were selected on the basis of devotion to the Motherland (political reliability), moral courage, valor and physical endurance. Most, if not all, OGBM troops were communists or Komsomolists, aged 18 to 30 years, and sportsmen or hunters. Enlisted troops were trained in the use of Soviet and German demolitions. OGBM troops were also trained in parachuting, the use of a map and compass, and terrain orientation.

The main mode of employment of OGBM assets was to infiltrate small groups into several sectors of the enemy rear for simultaneous strikes on enemy LOCs in support of offensive action by conventional Soviet formations. Once given their missions, these groups would normally cross the front lines at night, through gaps and junctions of enemy units. Sometimes they were delivered to the enemy rear by transport aircraft, the chosen landing zone being about 15 km from the objective.

OGBM miners usually operated with partisans. They trained the partisans in demolitions and targeting and gave them demolition supplies. The partisans, in turn, provided the miners with area and target intelligence, and information and guidance for the approach to targets. Occasionally, partisans provided security for the miners when they were placing their charges.

Most OGBM demolitions were emplaced at night. Delayed-action mines (*mina zamedlennogo deystviya*, or MZD) were often used because of their strong psychological impact on the enemy. According to S. Kh. Aganov,¹² these mines were often used to deny enemy use of several sections of a rail line and to force the enemy to build bypasses.

In preparation for the Smolensk Offensive at the end of July 1943, nine groups totalling 316 men from the 5th Brigade and the 10th OGBM were inserted by airplane into the enemy rear to simultaneously destroy enemy rail lines to a depth of 300 km on order from the commander of the Kalinin Front. After the order was given, the miners blew up more than 3,500 rails with an aggregate length of 700 km, seriously disrupting the movement of enemy reserves and significantly aiding the Soviet offensive.

On the night of March 11, 1943, a 23-man platoon of the 9th OGBM of the Northwestern Front, commanded by Lt. I. P. Kovalev, was parachuted into the enemy rear in an area 30 km northwest of Novorzhev.

On the ground, the miners made contact with the 1st Partisan Regiment of the 3rd Partisan Brigade.

The miners and partisans went into action on March 17, conducting four demolition operations on railroads and highways on that day. Over the next seven months, until Oct. 16, the miners derailed 16 military trainloads of men and equipment and destroyed 17 bridges, more than 8,000 linear meters of track bed, nearly 1,500 meters of telephone wire, several dozen motor vehicles, two tanks, an armored car, eight truckloads of ammunition, and, with the partisans, killed approximately 500 enemy soldiers.

In one of the operations with the partisans providing security, the OGBM troops on Aug. 24 destroyed the 56-meter-long railroad bridge across the Keb' River with four 50-kilogram explosive charges placed under the bridge piers, cutting that rail line for several days. For his actions in this period, Kovalev was named Hero of the Soviet Union, and all soldiers and sergeants in his platoon were awarded the Order of the Patriotic War or the Red Star.

OGBM troops were also used as tank destroyers on LOCs in the immediate enemy rear. In the July 1943 fighting in the Kursk Salient, for example, the 1st Guards Special Purpose Engineer Brigade was credited with destroying 140 German tanks and self-propelled guns, and inflicting up to 2,500 German casualties.¹³

The 13th OGBM operated this way in the vicinity of Bogodukhov and Akhturka in August 1943. During the Kiev operation, 47 tank-destroyer teams of the 13th operated in the enemy rear. In two years of combat, the teams of the 13th destroyed 93 tanks, 11 self-propelled guns, 214 automobiles, nine large trains and four bridges, and killed more than 2,000 Germans.¹⁴

Petsamo-Kirkenes

During the preparatory period of the Oct. 7-30, 1944 Petsamo-Kirkenes Operation to clear the

Germans from the approaches to Murmansk, the headquarters of engineer troops of the Karelian Front planned operations in the enemy rear by three detachments from the 6th OGBM and the 222nd Motorized Assault Combat Engineer Battalion of the 20th Motorized Assault Combat Engineer Brigade (one of five motorized engineer brigades under the chiefs of the engineer troops of the various fronts).

The first detachment, 133 men from the 6th OGBM in two companies, went into the enemy rear on Sept. 18. The two remaining detachments, 108 men from the 222nd and 49 men from the 6th OGBM, went in on Oct. 2.

Several hours before the beginning of the offensive, the detachments received the order by radio to go into action. Over the course of 15 days, the detachments conducted reconnaissance and demolition operations, destroying 20.6 km of telephone wire, 11 bridges and several score trucks, killing 452 Germans, capturing 45, and suffering only eight wounded in action.

In Aganov's estimation, these Spetsnaz engineer activities made the success of the 14th Army possible. About half of the men who operated in the enemy rear were decorated with awards and medals for their exemplary fulfillment of their mission.

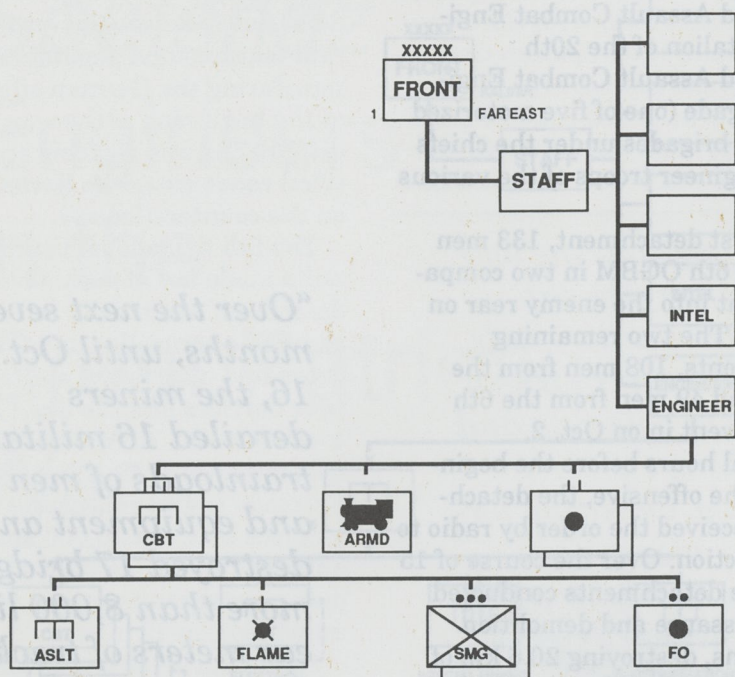
The Far East

As the war with Germany drew to a close, Spetsnaz engineers were redeployed to the Far East in preparation for the Manchurian campaign against the Japanese.¹⁵

Among the units transferred was the 20th Brigade, which was assigned to the 1st Far Eastern Front. The first operational combat mission of the 20th was the seizure and neutralization of the defenses of a complex of three railroad tunnels near Suifenhö. The tunnels were located one to three kilometers from the Sino-Soviet border; they were on the avenue of advance

"Over the next seven months, until Oct. 16, the miners derailed 16 military trainloads of men and equipment and destroyed 17 bridges, more than 8,000 linear meters of track bed, nearly 1,500 meters of telephone wire, several dozen motor vehicles, two tanks, an armored car, eight truckloads of ammunition, and, with the partisans, killed approximately 500 enemy soldiers."

Suifenho Tunnels Spetsnaz Detachments



Moreover, the spirit of this capability remains, as seen in the continued Soviet emphasis at operational and tactical levels on engineer *razvedka* and direct action to help commanders see and shape the battlefield.

Based on their past performance, it can be argued that current Soviet engineer units at operational echelons may present at least a latent *Spetsnaz* "deep operation" capability that has been largely overlooked. It could mean that the Soviet Army has the potential, through augmentation and supplementary selection and training, to rapidly reform ostensibly conventional, front-line units into forces for deep raiding and reconnaissance. If so, this would represent an economical and operationally secure way for the Soviets to quickly expand and modify their *Spetsnaz* capabilities to meet specific contingencies. Whether or not it is the Soviet intent to maintain a latent engineer *Spetsnaz* capability, the deep-operation potential of Soviet combat-engineer units must be recognized.

of the 5th Army and could not be bypassed.

The Japanese defenses were attacked in the pre-dawn hours of Aug. 9 by two detachments of the 20th. Each detachment comprised one assault battalion, one company of flame throwers, two platoons of submachine gunners and a group of artillery observers. These detachments were also supported by an armored train and two battalions of front artillery. By morning on Aug. 9, the detachments had defeated the Japanese defenses, permitting the forward detachment of the 187th Rifle Division to capture the tunnels intact and secure entry of the 5th Army into the Manchurian heartland.

Subsequent to the Suifenho operation, and after the Japanese capitulation, special detachments of the 20th were airlanded more than 250 km into hostile territory at Harbin (120 men on Aug. 18) and Kirin

(150 men on Aug. 19) to accompany front plenipotentiaries who negotiated the surrender of Japanese garrisons there. These detachments, for the most part made up of men who had fought in the Suifenho operation, took the Japanese defenders by surprise. On landing, as negotiations progressed, they quickly captured key bridges, rail yards, radio stations, telephone and telegraph offices, banks and other critical installations to prevent destruction or removal by the Japanese. The assault force landing at Harbin also captured Kwantung Army Chief of Staff Gen. Hata and several other senior Japanese officers.

Conclusions

Spetsnaz combat engineer capabilities as they existed more than 40 years ago played an important role in the theory and practice of deep battle against the Germans.

Maj. William H. Burgess III is a Special Forces officer currently assigned to the Special Warfare Center and School's Directorate of Training and Doctrine, Program and Doctrine Management Branch. A graduate of the Military Intelligence Officer Advanced Course, he holds a bachelor's degree in political science from Southeastern Massachusetts University, a master's degree in public administration from Clark University and a doctor of laws degree from American University.

Notes

¹ See Col. David M. Glantz, *Soviet Operational Intelligence in the Kursk Operation (July 1943)*, (Fort Leavenworth, Kan.: Soviet Army Studies Office, August 1988), pp. 6, 7, 18, 21, 22, 28, 31.

² Information about Starinov is derived from Ilya Grigorevich Starinov, *Miny zhut svoego chasa* (The Mines Await Their Hour), trans. Owen A. Lock and James F. Gebhardt (Moscow: Voenizdat, 1964), p. 76.

³ Ibid., p. 34.

⁴ Ibid., pp. 41-42.

⁵ Ibid., p. 157.

⁶ Col. A. A. Soskov, "Sovershenstvovanie organizatsionnoy struktury inzhenernykh voysk v gody velikoy otechestvennoy" (Improvements in the Organization of Engineering Troops During World War II), trans. Owen A. Lock, *Voenno-istoricheskii zhurnal*, 12/1985, pp. 66 and 68 (table).

⁷ Ibid.

⁸ Ibid.

⁹ Most of the information in this chapter on miners is derived from the following translations by James F. Gebhardt: S.Kh. Aganov, ed., *Inzhenernyye voyska sovetskoy armii 1918-1945* (Engineer Troops of the Soviet Army 1918-

1945) (Moscow: Voenizdat, 1985), pp. 459-463; Arkadii F. Khrenov, *Mostu k pobede* (Bridges to Victory) (Moscow: Voenizdat, 1982), pp. 336-344; V. F. Margelov, et al., *Sovetskie vozdushno-desantnye: voenno-istoricheskii ocherk* (Soviet Airborne Assault Forces: A Military-Historical Outline) (Moscow: Voenizdat, 1986), pp. 296-299; Kirill A. Meretskov, *Na sluzhbu narodu* (In Service to the People) (Moscow: Voenizdat, 1983), pp. 391, 411, 413; and N. P. Suntsov, et al., *Krasnoznamennyi dal'nevostochnui: istoriia krasnoznamennogo dal'nevostochnogo voennogo okruga* (Red Banner Far East: The History of the Red Banner Far East Military District) (Moscow: Voenizdat, 1985), p. 202.

¹⁰ *Sovetskaya voennaia entsiklopedia* (Soviet Military Encyclopedia) 5 (Moscow: Voenizdat, 1978), p. 290.

¹¹ Ibid.

¹² Aganov, p. 460.

¹³ Lt. Gen. M. Kushnikov, "Toolers in the War," (undated English translation) *Voennii Vestnik*, 5/1985, pp. 78-81.

¹⁴ Aganov, p. 462.

¹⁵ Information on engineer *spetsnaz* activities in the Far East is derived from Khrenov, Meretskov, Margelov and Suntsov.

Enlisted Career Notes

Special Warfare

CMF 18 leads Army in 1989 E-8 selection rate

The 1989 E-8 selection rate for soldiers in CMF 18 led the Army with an overall selection rate of 71.4 percent, compared to the Army average of 17.1 percent. From a field of 196 eligible NCOs, 140 were promoted. The following figures show how other Army CMFs fared:

CMF 11 – 17.4 percent	CMF 12 – 18.3 percent
CMF 13 – 15.7 percent	CMF 19 – 8.8 percent
CMF 31 – 20 percent	CMF 91 – 14.8 percent

The average time in service for SF soldiers promoted in the primary zone was 15.8 years, while the average time from the secondary zone was 14 years. The Army average time in service for the primary zone was 17.1 years, and from the secondary zone, 16.8 years. Average ages for CMF 18 soldiers were 35.1 years for the primary and 33.7 years for the secondary zone, in comparison to the Army average of 37.3 and 37 years for those same zones. The average CMF 18 primary-zone time in grade, 5.6 years, was better than the Army average of 5.9 years, as was the secondary-zone average time in grade, 4.2 years, compared to the Army average of 5.7. The following matrix shows the breakdown within the CMF by MOS:

MOS	Primary			Secondary			Totals		
	nr	zn	nr sel %	nr	zn	nr sel %	cons	sel	%
18B	13	10	76.9	31	24	77.4	44	34	77.3
18C	8	6	75.0	28	23	82.1	36	29	80.6
18D	5	5	100.0	36	22	61.1	41	27	65.9
18E	12	6	50.0	31	21	67.7	43	27	62.8
<u>18F</u>	<u>6</u>	<u>2</u>	<u>33.3</u>	<u>26</u>	<u>21</u>	<u>80.8</u>	<u>32</u>	<u>23</u>	<u>71.9</u>
Total	44	29	65.9	152	111	73.0	196	140	71.4

Reenlistment now easier for IRR, IMA soldiers

An agreement between the Army Reserve Personnel Center and the U.S. Army Recruiting Command has made re-enlisting easier for reserve-component soldiers who are not in units. Individual Ready Reserve or Individual Mobilization Augmentee soldiers who want to re-enlist may contact their ARPERCEN personnel management NCO, who will forward re-enlistment documents and instructions to them. Once the soldier has his or her documents (DD Forms 4-1 and 4-2, DA Form 4688 and the ARPERCEN instructions) a local recruiter can help in completing the paperwork and scheduling a commissioned officer to administer the re-enlistment oath.

SF soldiers can expect repetitive group assignments

The SF enlisted branch reminds soldiers that the size of the branch does not permit an unlimited number of potential assignments. While branch does consider soldiers' preferences in reassignment, the enlisted manager will try to ensure that soldiers receive repetitive assignments to groups to which they are oriented by virtue of experience and language proficiency. Assigning soldiers from one group to another defeats the purpose of area orientation and the development of language skills, and soldiers should be realistic by listing preferences in line with their assignment histories and training.

Pilot for SF ANCOC-RC scheduled to run in 1991

The Special Warfare Center and School NCO Academy is scheduled to conduct the pilot course for Phase 2 of the SF Advanced NCO Course - RC from Aug. 4-24, 1991. Phase 2 closely parallels the SF-unique portions of the active-component SF ANCOC, according to 1st Sgt. Peter Van Borkulo of the NCO Academy. Reserve-component soldiers will take skill-level-4 training in SF MOSs 18B, 18C, 18D and 18E. Soldiers with a primary MOS 18F will take level-4 training in their secondary MOS. Prior to attending Resident Phase 2, soldiers must complete Phase 1, Army Common Leader Training ANCOC-RC, which is conducted at Continental U.S. Army NCO academies, some National Guard military academies and U.S. Army Reserve Forces schools. Soldiers will also be required to complete a "read ahead" instructional packet prior to attendance. The SWCS has distributed a memorandum concerning SF ANCOC-RC to the reserve-component SF community and is developing a general-information packet. For further information contact the Nonresident Training Branch, SWCS Directorate of Training and Doctrine, at AV 239-3822/4920, commercial (919) 432-3822/4920, or the NCO Academy at AV 236-2897/7134, commercial (919) 396-2897/7134.

Soldiers should receive welcome packet prior to SF ANCOC

The SWCS NCO Academy mails welcome packets to soldiers scheduled for the SF Advanced NCO Course approximately four weeks prior to their course starting dates. Receipt of the packet is important, according to 1st Sgt. Peter Van Borkulo of the NCO Academy, because it contains student guidance and information on training policies. Soldiers nearing their class dates who have not received packets should contact SFC Treutlein at the SWCS NCO Academy, AV 236-2944/7134, commercial (919) 396-2944/7134.

Updating Form 2A important for promotion, assignments

Soldiers continue to experience problems with assignments and career progression because they have not updated their Form 2A, according to Maj. William Dietrick, SF enlisted assignments manager at PERSCOM. Each year soldiers are asked to review their Form 2A through their unit military personnel office. Information on the form is used to update the enlisted master file. It is the soldier's responsibility to update the Form 2A to correct errors and provide documentation to support the corrections.

PERSCOM has toll-free number

The Total Army Personnel Command has a toll-free number which enlisted soldiers can use to get information on career development or assignments. The number is 1-800-ALL-ARMY; after normal duty hours, soldiers may leave messages and their calls will be returned. Soldiers who do not have access to a toll-free line may call commercial (202) 325-7793.

Correction to Summer 1989 Career Note

In some copies of the Summer 1989 *Special Warfare*, the Enlisted Career Note titled "ANCOC to become prerequisite for O&I," stated that effective Oct. 1, 1989, graduation from an Advanced NCO Course will be a prerequisite for attending the SF Operations and Intelligence Course. As currently scheduled, the effective date will be Oct. 1, 1990. We regret the error. Despite the change in dates, NCOs and their commanders should still plan now for their ANCOC schooling if they hope to attend O&I in FY 91 or later.



Officer Career Notes

Special Warfare

FA 39 battalion-command selection board to convene in February

The FA 39 battalion-command selection board will convene Feb. 6-16, 1990 to select officers for future PSYOP, Civil Affairs and other special-battalion commands. The board will consider all officers who are majors promotable or lieutenant colonels, have not previously commanded a battalion or been relieved from command, and who will have less than 252 months of active federal service as of October 1990. The board will select officers for the 8th and 9th PSYOP Battalions and Joint Task Force-B in Honduras. It will also select seven alternates — four based specifically on regional experience and training, one for each theater. For further information contact Lt. Col. Ted Sahlin, SWCS Special Operations Proponency Office, at AV 239-6406.

Prerequisites for CAOC Phase IV

Reserve Civil Affairs officers who wish to attend Phase IV of the Civil Affairs Officer Advanced Course should keep in mind that mandatory-resident Phase IV is the graduating phase. Prerequisites for Phase IV are completion of Phases I, II and III. The first three phases may be completed in any order that meets an officer's requirements, according to Lt. Col. Larry Wayne of the Special Operations Proponency Office. Officers may not attend Phase IV, however, without a completion certificate for the first three phases. For further information, contact Maj. Johnny Virgin, commander, Co. B, 3rd Bn., 1st Special Warfare Training Group, at AV 239-1208/1569.

Use fax, overnight mail to reach SF Branch quickly

Officers who need to get documents to the SF Branch quickly may want to use facsimile or overnight mail. The number and address are:

- Fax — AV 221-5463/6073; be sure to indicate the office symbol — TAPC-OPE-SF.
- Overnight mail address — Commander, U.S. TAPC; Attn: TAPC-OPE-SF; Room 4N51, Hoffman II; 200 Stovall St.; Alexandria, VA 22332-0414.

SWCS to conduct SF Senior Warrant Officer Course

The JFK Special Warfare Center and School will conduct a Special Forces Senior Warrant Officer Course at Fort Bragg July 9-Sept. 12, 1990. Warrant officers who are in grades CW2 (promotable) or CW3 and who have not attended the SF Senior Warrant Course are eligible to attend. Even though some eligible officers may have attended other senior or advanced warrant-officer courses, they will still be required to attend the SF-specific senior course, according to CWO 2 Bobby Shireman of the SWCS Special Operations Proponency Office. Eligible officers need not apply for the course; they will be selected and scheduled by the Officer Professional Development Branch at PERSCOM. Selected warrant officers will be issued DA-funded orders and will attend either as TDY-and-return or PCS, TDY-en-route. For further information on the course, contact CWO 2 Bobby Shireman at AV 239-2415 or CWO 4 John McGuire, SF Branch warrant-officer assignments manager, at AV 221-7841.

FA 39 program to select school for graduate training

Selection of a university to conduct a cooperative graduate-degree program for FA 39 officers is scheduled for the second quarter of FY 1990, with classes to begin in September 1990. Contract solicitations for the program have been sent to more than 40 colleges and universities nationwide, according to Lt. Col. Ted Sahlin of the SWCS Special Operations Proponency Office. Classes will be held at Fort Bragg in SWCS facilities. Graduate schooling in a related discipline is one of four aspects of the professional education program for FA 39 officers. Language training, the Regional Studies Course and either the PSYOP or Civil Affairs Officer Course are the other three. Officers selected for the program will be moved to Fort Bragg in PCS status. Members of the initial class will arrive early in the summer of 1990 to attend CA or PSYOP training prior to graduate school and will attend the Regional Studies Course and language training after completing their graduate degrees. Later classes will attend CA and PSYOP training, Regional Studies and possibly language training before entering graduate school. Upon completion of their FA 39 training, officers will be eligible for worldwide assignment. The key to selection for graduate training is branch qualification and a strong performance in all assignments, Sahlin said. Officers who wish to apply for the program should contact their branch professional development officer at PERSCOM.

PERSCOM points of contact

The following list may help officers who need to contact PERSCOM about promotions, assignments or professional development:

SF Officer Branch

Lt. Col. Corson L. Hilton	Branch Chief	AV 221-3173 comm. (202) 325-3173
Maj. Joe Whitley	Field Grade Assignments	AV 221-3169 comm. (202) 325-3169
Capt. Pat Higgins	Prof. Development, Accessions	AV 221-3178 comm. (202) 325-3178
Capt. (P) John Bone	Company Grade Assignments	AV 221-3175 comm. (202) 325-3175

Officer Functional Area 39

Maj. Charles D. Childress	FA 39 Manager	AV 221-3119 comm. (202) 325-3119
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Warrant Officers

CWO 4 John McGuire	WO Assignments Manager	AV 221-7841 comm. (202) 325-7841
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Mailing address: Commander, PERSCOM; Attn: TAPC-OPE-SF (for SF officers), TAPC-OPB-A (for FA39), TAPC-OPW-II (for WO); 200 Stovall St.; Alexandria, VA 22332-0414 (SF), -0411 (FA 39), -0400 (WO).



Update

Special Warfare

USASOC established at Fort Bragg

The U.S. Army Special Operations Command was established at Fort Bragg Dec. 1 in a move designed to increase readiness and streamline command and control of Army special-operations forces.

Lt. Gen. Gary E. Luck assumed command of the new major command, the Army's 16th, which consolidates command of Army active and reserve special-operations forces.

The 1st Special Operations Command, formerly under Army Forces Command, now forms the USASOC active component. USASOC will also command all Army Reserve SOF and will coordinate training and readiness of National Guard SF units with the National Guard Bureau and the state adjutants general.

The JFK Special Warfare Center and School, responsible for training all Army SOF except Rangers and special-operations aviation, is now under the operational command of USASOC, even though it still reports to the Army Training and Doctrine Command.

Speaking at the activation ceremony, Luck, the former commander of the Joint Special Operations Command, called the establishment of USASOC an evolutionary milestone in special operations.

"USASOC will serve as the special-operations focal point for the Total Army. The Active Army, Army National Guard and Army Reserve special-operations forces now have a single headquarters responsible for their organization, training, logistics and readiness," Luck said. "We are not a Special Forces or a

'Green Beret' command. We are a special-operations command. From direct-action units to those with sophisticated communications and information-dissemination equipment, USASOC provides this country a unique capability, a capability that can support conventional or conduct unconventional operations."

Despite recent calls for troop reductions and cuts in future defense budgets, Luck told his listeners, "The establishment of USASOC is



USASOC crest

not an ending, not the final step in the improvement of special operations. Our soldiers are some of the most dedicated our Army has to offer. Our equipment is the finest our country produces, and we are continuing our modernization efforts, both in hardware and facilities. I assure you we will continue our upward spiral."

Besides streamlining command and control of Army special-operations forces, USASOC will improve Army support to the U.S. Special

Operations Command, according to Lt. Col. Don Gersh, USASOC public affairs officer. USSOCOM, located at MacDill Air Force Base, Fla., is the congressionally-mandated unified command responsible for all Department of Defense special-operations forces.

As the Army component of USSOCOM, USASOC will provide Special Forces, Ranger, special-operations aviation, psychological operations and civil affairs forces to USSOCOM for deployment if required to other combatant unified commands around the world, Gersh said.

As a major Army command, USASOC will report directly to Department of the Army for administrative and logistical matters.

Construction begins on new SWCS classroom building

Construction has begun at Fort Bragg on a new academic building which will allow the Special Warfare Center and School to handle heavier student loads and consolidate training now scattered across the post.

Officials broke ground Oct. 5 for the \$16.8 million project, located behind the JFK Memorial Chapel and across Community Access Road from the SWCS headquarters.

The 3 1/2-story building, 186,000 square feet in all, will contain 62 classrooms, ranging in size from 15-student to 200-student, which can accommodate as many as 2,000 students, according to Lt. Col. James F. Johnson, SWCS School Secretary. It will include a 400-seat auditorium and a 10,000-square-foot library, twice the size of the current SWCS library. An overhead crosswalk will eventually link the new building to the SWCS headquarters.

The new classroom building will allow the Center and School to close out the majority of training classes now being conducted in World-War-II-vintage buildings in the Son Tay Road and 1st Corps Support Command areas of Fort Bragg, Johnson said.

Construction should be completed in approximately two years; all students should be out of the COS-COM area within five years, Johnson said. The need for a new building was recognized in 1985; since 1987, the Center and School's average student load has tripled, from 750 students per week to 2,000 per week.

SWCS seeks name for new classroom building

The Special Warfare Center and School is seeking recommendations from the SOF community for a name for its new academic building.

The SWCS wants to name the new building in honor of a person who has made significant contributions in support of special-operations missions, according to Lt. Col. James F. Johnson, SWCS school secretary.

Recommendations should include a short biographical description of the nominee and the reason for nomination. Memorialization regulations require that the nominee be deceased, Johnson said.

Recommendations should be submitted to: Commander, U.S. Army John F. Kennedy Special Warfare Center and School; Attn: ATSU-SE; Fort Bragg, NC 28307-5000. Nominations must be received by April 30. For more information, contact Lt. Col. James Johnson, AV 239-3600, commercial (919) 432-3600.

SOF aviation headquarters to be formed at Fort Bragg

The Army has announced plans to put all its active-duty special-operations aviation units under a single headquarters at Fort Bragg.

Headquarters, 160th Special Operations Aviation Regiment

(Airborne) is scheduled to be formed and located at Fort Bragg by the summer of 1990. No regimental commander has yet been selected.

The new headquarters will consolidate control of approximately 1,900 soldiers and 174 aircraft belonging to the 160th Special Operations Aviation Regiment. **The regiment's 1st and 2nd battalions are located at Fort Campbell, Ky., and its 3rd Battalion is based at Hunter Army Airfield, near Savannah, Ga.** There are no plans to move any of the subordinate units, according to Lt. Col. Don Gersh, public affairs officer for the



File photo

U.S. Army Special Operations Command. The headquarters will also have ties, but not command authority, with the **1st Battalion, 245th Special Operations Aviation, Oklahoma Army National Guard; and with the 617th Aviation Detachment in Panama.**

The regimental headquarters will be part of the 1st Special Operations Command, the active component of the new U.S. Army Special Operations Command, also based at Fort Bragg.

Consolidating special-operations aviation assets under a single command will improve safety, maintenance, training, standardization of

training and operations, and validation of wartime missions, Gersh said. The headquarters will also assist in developing SOF aviation doctrine.

SOF aviation units use specially modified helicopters with sophisticated equipment, including night-vision equipment and terrain-following and terrain-avoidance radar. Their missions include delivering, supplying and extracting U.S. and allied special-operations forces. They can also be used in search-and-rescue missions, in helping troops behind enemy lines escape or evade capture, and in coordinating air strikes against enemy positions in support of ground troops.

Center and School building SOF data base

The JFK Special Warfare Center and School is working to establish a computer data base of lessons-learned which will aid special-operations units in planning their training and operational missions.

The **Special Operations Lessons Learned Management Information System** will be a user-friendly, fully automated library of observations and experiences of soldiers assigned to special-operations and security-assistance missions.

The idea of a data base of lessons and observations is not new; the **Army Center for Lessons Learned at Fort Leavenworth, Kan.,** and the Joint Chiefs of Staff already have such data bases, according to Lt. Col. Michael Harris of the SWCS Joint Force Integration Directorate. Information contained on the other systems is not SOF-specific, however, and often does not meet the requirements of SOF units.

"Our system and the existing systems will complement each other, not compete," Harris said, adding that information on **SOLLMIS** will eventually be shared with the other systems.

Sources of SOLLMIS data will include special-operations active and reserve-component units, military groups, security-assistance

organizations, mobile training teams, historical analysis, and the SOF-related information contained on the other two data bases.

SOLLMIS will feature a program developed in the JFID to be user-friendly, Harris said. Users will make selections from a succession of menus in order to find or enter data. They will only need to type data into the program when they are recording their observations, lessons-learned and recommendations. Since there are no codes or commands to memorize other than a password, users will not need extensive training or experience to use the data base.

SOLLMIS categorizes the data according to a number of factors, including climate, terrain, geographic region, mission, and SOF element involved. The extensive categories give the program more "search" capability, Harris said. "It allows us to exploit fully the computer's ability to analyze data." Data will also include a point of contact so users can follow up on recommendations.

SOLLMIS currently has approximately 130 lessons-learned on the system, some taken from the Army and joint data bases. These are already being used, when applicable, to brief security-assistance teams which the SWCS Security Assistance Training Management Office sends to different parts of the world.

Eventually the system will be available through telephone-modem communication and will also be tied to the Army and JCS lessons-learned systems. Right now, Harris said, SWCS is trying to fill the data base. "After that we will automate the output, then institutionalize the collection process and eventually link up with other data bases. The system should be complete in about a year," he said.

Harris encourages SOF units not to wait until SOLLMIS is complete to contact his office for information: "Units with specific needs can write and we will print out what we have

now and mail it to them. We are also looking for input from the field for the data base."

To get more information about the system, contact Lt. Col. Michael Harris; Joint Force Integration Directorate; USAJFKSWCS; Fort Bragg, NC 28307; phone AV 239-4114/3538, commercial (919) 432-4114/3538.

CA units, SWCS to develop mission training plans

Civil Affairs units and the Special Warfare Center and School have agreed to a joint program to develop nine Civil Affairs mission-training plans.

The agreement was reached a



Photo by Dave Lillico

meeting held at the SWCS Oct. 1, according to Lt. Col. Larry Wayne, chief of Civil Affairs proponenty in the SWCS Special Operations Proponenty Office.

Mission training plans, called MTPs, are written to assist particular units in training for their missions. Under the agreement, the MTPs will be developed as follows:

- 351st CA Command — foreign-internal-defense/unconventional-warfare battalion and the headquarters and headquarters company for a Civil Affairs brigade.
- 352nd CA Command — general-purpose battalion and the HHC

for a Civil Affairs command.

- 353rd CA Command — FID/UW battalion general-support company and general-purpose direct-support battalion.
- 358th CA Brigade — general-purpose battalion direct-support company.
- 360th CA Brigade — general-purpose battalion general-support company.
- 361st CA Brigade — FID/UW battalion direct-support company.

The plan calls for all nine MTPS to be completed prior to the conversion to the Civil Affairs L-series Table of Organization and Equipment, scheduled to take place Sept. 16, 1992, Wayne said.

New course would shorten MFF qualification time

A new course proposed by the Special Warfare Center and School would allow qualified soldiers with sport-parachuting free-fall experience to obtain a military-free-fall parachutist's certification in half the time now required.

The concept of a two-week, three-day Military Free Fall Certification Course was approved by the SWCS commander Oct. 11 and has been forwarded to the Army Training and Doctrine Command for approval, according to Capt. Al Charters, commander of Co. B, 2nd Battalion, 1st Special Warfare Training Group. Charters' company is responsible for conducting military-free-fall training at the SWCS.

The majority of the five-week Military Free Fall Parachutist Course, currently the only avenue to MFF certification, is spent teaching students to stabilize during free fall and to recover stability during maneuvers, Charters said. The shorter course would allow students who have already had stabilization training to concentrate on military applications and equipment.

"Students in the shorter course will still train to the standards of the Military Free Fall Parachutist Course," Charters said. The first three days of the proposed course,

the ground training, would be the same as for the five-week course. Advanced operations, including grouping, night jumps, oxygen jumps, combat-equipment jumps and high-altitude-high-opening jumps, would also duplicate those in the longer course.

The certification course has been designed in an effort to provide units another option for getting personnel qualified for military free fall in a shorter time, Charters said. It would be open to soldiers on orders to or currently serving in positions requiring military-free-fall operations. Prerequisites for the course include:

- A U.S. Parachute Association "B" license or higher
- A statement by the soldier's commander that he has at least 40 minutes of cumulative free fall
- Nine months or more remaining time in service upon completion of the course
- Proof of Air Force physiological training (AF Form 1274, referred to as a "chamber card")
- Medical examination for free-fall parachuting within one year of course completion, in accordance with Chapters 2 and 7 of AR 40-501.
- Verification of MFF-coded MTOE/TDA paragraph and line number for the position in which the soldier is serving.

If approved by TRADOC, the course is scheduled to run its first classes during the summer and fall of 1990, Charters said. For more information on the course, soldiers may contact Capt. Al Charters at AV 236-7601/7796.

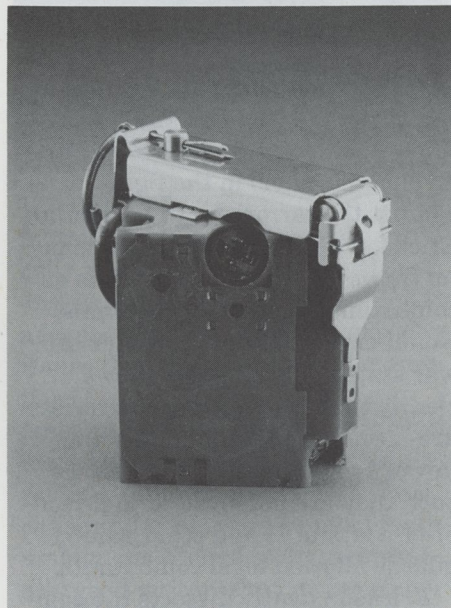
Units assist in revising FM

Members of Civil Affairs troop-program units met at the Special Warfare Center and School Nov. 13-17 to plan the development of the preliminary draft of the revised FM 41-10, *Civil Military Operations*.

Company B, 3rd Battalion, 1st Special Warfare Training Group has the responsibility for revising FM 41-10, according to Lt. Col. Larry Wayne, SWCS chief of Civil

Affairs proponentcy. Because the bulk of Civil Affairs is in the reserve component, Wayne said, participation by field units in the development of the manual is critical, since doctrine is the foundation upon which force structure and training will be based.

Field units will also have a chance to provide comment and recommend changes when they review the coordinating draft of the revised manual, scheduled to be mailed to units early in FY 91, Wayne said.



File photo

Prototype of the Pursuit Deterrent Munition

New munition will delay enemy pursuit

Special Forces units will soon have a new weapon in their arsenal which will allow them to delay or disrupt enemy pursuit.

The *Pursuit Deterrent Munition* is the first munition designed especially for Special Forces, according to MSgt. George Rallios, project NCO in the SWCS Directorate of Combat Developments.

SF units operating in hostile territory take every precaution to prevent discovery or confrontation with the enemy. But if discovery does occur, the need to break contact with the enemy is critical — otherwise there is often no chance of extraction, resupply or accom-

plishing the mission.

Current munitions to protect withdrawals are slow and hazardous to emplace, Rallios said. Use of these munitions also requires units to record their position, since they do not have a self-destruct mechanism and will remain in place.

Only 3 1/2 inches high and approximately three inches in diameter, the PDM weighs one pound and can easily be thrown or emplaced by hand, Rallios said. The PDM is self-destructing: it will detonate automatically after a predetermined period of time.

Several activated PDM dropped behind withdrawing SF elements would create an obstacle: The pursuing enemy would either take casualties, stop and breach the mined area or divert their route, Rallios said. Any of these options would give the SF unit time to break contact.

Powered by a built-in battery, the PDM is activated by pulling a pin and removing an arming strap, similar to the process for arming a hand grenade. Once activated, the PDM automatically deploys seven 20-foot trip wires. The PDM can be triggered by disturbing these trip wires, by its built-in anti-tampering mechanism or by the expiration of its self-destruct time. When it is triggered, a small preliminary charge throws the main charge to approximately shoulder height before it explodes, Rallios said.

Fielding of the PDM is scheduled for the third quarter of FY 90, Rallios said. The PDM will be issued on an "as required" basis, similar to other munitions. For further information contact MSgt. George Rallios at AV 239-1816.



Book Reviews

Special Warfare

LEGITIMATE USE OF MILITARY FORCE AGAINST STATE-SPONSORED INTERNATIONAL TERRORISM



Lt Col Richard J. Erickson

Legitimate Use of Military Force Against State-Sponsored International Terrorism. By Lt. Col. Richard J. Erickson, USAF. Maxwell Air Force Base, Ala.: Air University Press, 1989. 267 pages.

In *Legitimate Use of Military Force Against State-Sponsored International Terrorism*, Lt. Col. Richard J. Erickson has written a capstone text on applications of the law of conflict against state-sponsored terrorists. This book should be read by all military and civilian lawyers, law students and policy makers who are concerned with keeping the fight against terrorism within the bounds of law. Erickson gets very high marks for research, clarity and insight. He has an excellent organization of chapters, a very good appendix on the legal uses of armed force and an outstanding bibliography. The book could use an index, however, a more attractive cover, and closer proof-reading that

would clean up embarrassing gaffes such as his citing of the "Posse Commodities Act" on Page 5.

Erickson has made a significant contribution to the debate on terrorism by exposing the pseudo-legal propaganda of terrorists and sponsoring states, exploding the myths held by too many senior U.S. officials, and showing the way in which the law is a vital weapon (and not an encumbrance) in the fight against the terrorists. In particular, Erickson buries the oft-heard maxim that recognition of terrorists as combatants (instead of criminals) would entitle them to prisoner-of-war status. His analysis shows clearly that international terrorists are illegal combatants under the law of armed conflict, and that as such they are not entitled to prisoner-of-war status and other safeguards allowed legal combatants.

Erickson neatly dissects the competing "law enforcement" and "warfare" theories of dealing with terrorism. Although advocating that international terrorism be dealt with under the law of armed conflict, Erickson is fair and objective in his discussion of each approach. Despite having to deal with a subject traditionally treated in the driest of prose, Erickson on terrorism reads rather smoothly. He introduces each chapter with a set of interesting quotes, gets to the point straightaway and does not hedge his answers. All told, this is an excellent primer for understanding international terrorism and the response of civilized nations in the context of the law.

Maj. William H. Burgess III
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The Law of War. By Ingrid Dettler DeLupis. New York: Cambridge University Press, 1987. ISBN 0-521-34337-2 (hardback), 0-521-34838-2 (paper). 411 pages. \$24.95.

The Law of War is a very personal interpretation of what the author wishes the law of war would be. She has obviously devoted a great deal of detailed scholarly analysis to the subject and has marshalled numerous citations to gain credibility for her opinion.

Unfortunately, the value of her analysis is flawed in two major respects. First, if the reader is not fluent in at least Spanish, French and German, it is very difficult to review or use DeLupis' cited authorities. Second, an inordinately large number of her citations of authority are her own prior writings.

The orientation of this work is further skewed by DeLupis' treat-

LSE Monographs in International Studies

THE LAW OF WAR

Ingrid Dettler DeLupis

ment of the 1977 Protocols I and II to the 1949 Geneva Conventions as the current state of the law between nations. The protocols certainly do not merely codify existing customary international law; in fact, they are a significant attempt to "legislate" in the international arena. DeLupis recognizes that of the major nations of the world, only France and China have ratified these agreements. (France has, in fact, ratified only Protocol II.) Despite that recognition, however, she proceeds to discuss the laws of war as if the 1977 protocols are the most recent definitive statement on the topic.

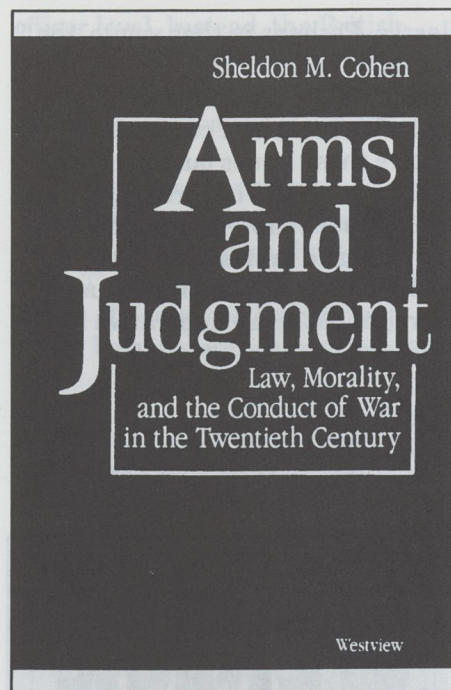
The net result of these flaws is that *The Law of War* is of extremely limited value to the practitioners of the art of war. It has a comprehensive bibliography, but one must be an accomplished linguist to get the full benefit of the author's research. This work does cover many tantalizing questions on unconventional warfare. The analysis, however, is tainted and rendered virtually useless to the practitioner by DeLupis' presumption that the 1977 protocols are currently enforceable elements of the law of war.

Maj. John P. Young
Command Judge Advocate
USAJFKSWCS

Arms and Judgment: Law, Morality and the Conduct of War in the Twentieth Century.
By Sheldon M. Cohen. Boulder, Colo.: Westview Press, 1989. ISBN 0-8133-0703-1. 226 pages. \$16.95 (paper).

The issues raised in this book are critical for all members of America's evolving special-operations forces, but particularly for its leadership. Professor Cohen attempts, and for the most part succeeds, in dealing with the moral and legal dilemmas of war and its conduct.

Before you dismiss this out of hand as another boring rehash of a freshman philosophy class, look



more closely. The author has specifically aimed at avoiding the absurd and hypothetical and has sought to address what he calls "the moral issues that really arise in the practice of war." Cohen's work is concrete and understandable. He recognizes that law and morality, while related, many times diverge, thus causing the issues to be even more ambiguous. Cohen is an exceptionally good writer who has based his analysis on history and tries always to operate in a historical context. The result is worth the reader's time and consideration.

The book is coherently organized and can be read sequentially or topically. The first two chapters are general in nature and set the foundation for later sections. In fewer than 50 pages, Cohen discusses what other authors take entire books to cover, and he does it more clearly. If you want a primer on war and morality, international law and the 1907 Hague Conventions, these two chapters will serve you well.

The other four chapters each begin with a setting of historical context. Through this means Cohen then deals with major themes that have all been central issues in different decades. The "Justification of War" (Chapter 3) begins in the peri-

od between the two world wars but moves forward to include the United Nations. The fourth chapter looks at "The Strategic Air War" (World War II) and the fifth chapter at "Small Wars" (1950-1970s). The final chapter investigates nuclear war and deterrence.

Cohen's writing is a joy to read. His style is clear and to the point, without being overly simple. His best aspect, stylistically, is his technique of using concrete, realistic examples to analyze the issues, combining the lofty probings of a philosopher with common-sense practicality. Cohen's empathy with the moral dilemmas caused by war and its conduct is a breath of truly fresh air.

For the most part, his analysis is first-rate, and he attempts to address moral and legal issues in a way that will produce useful conclusions. This sounds like an odd compliment, but it is one that not many other books on these subjects deserve. The book is already too parsimonious (only 192 pages of text) to even attempt a synopsis, but some of its highlights bear mentioning.

First is Cohen's discussion and conclusion that law and convention are agreed-upon and therefore somewhat transient, while morality must be more transcendent. Morality must provide an anchor for a given group, society or collection of nations through which actions can be judged. Given the evolving (some would say regressing) nature of morality in our society, this puts us at a disadvantage in determining what we can and cannot do in war.

Cohen also notes the importance of leadership in assuring that law and morality are properly served. As an example, he states that the primary responsibility for the discovery and prosecution of war criminals rests with their own chain of command, not with the opposing side. Because of the ambiguous nature of the activities in which SOF participates, this issue is of paramount importance and under-

scores the heavy responsibility of our leaders.

Cohen very clearly gives several instances when international law has been manipulated for political reasons. As he eloquently shows, military and political necessity are not viable excuses for any and all acts, regardless of whether the actor is a superpower or an underprivileged minority. He has particular contempt for terrorist groups in general and for George Habash of the Popular Front for the Liberation of Palestine in particular.

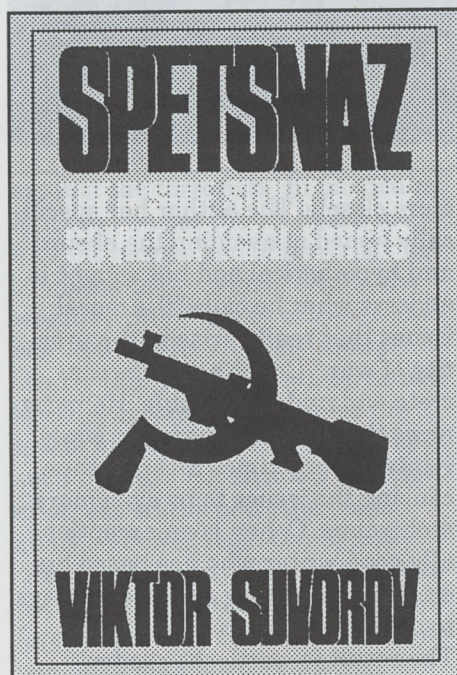
The only disappointment in the book is unfortunately a key one for those of us in SOF. Cohen's small-wars chapter is a rather incomplete discussion: He focuses on the "dress-code issue" of irregular warfare. This is the requirement for insurgents to wear uniforms or distinctive markings in order to qualify as combatants. Cohen's bottom-line conclusion is that since dressing as civilians will endanger real civilians (they might be shot as suspected guerrillas), the wearing of civilian clothing is not only illegal but immoral.

This conclusion begs bigger issues. If one accepts that premise, then is it morally correct for guerrillas (or U.S. forces in an unconventional-warfare role) to take actions designed to provoke reprisals against civilians by the incumbent government? This is a time-honored (Cuba, Greece, Vietnam) method of isolating the government from the people, a key objective in an insurgency. The small-wars chapter needs to be greatly expanded, as irregular warfare may in fact pose far more moral, ethical and legal problems than the regular variety.

Despite this one shortcoming, the book is an important one. We in SOF (like most military personnel) try not to think about the kind of issues Cohen addresses because they are too hard or too confusing. Here is a book that at last presents them in an intelligible fashion. The book is highly recommended as a basis for professional-development

classes. Perhaps in that venue, the incompleteness of the SOF-related chapter is not altogether unwelcome. We must as a community resolve these issues ourselves, and each of us should be striving to "write" that chapter for our own spiritual and professional well-being. This is not an intellectual exercise, but a key imperative for SOF.

Maj. Steven P. Bucci
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Spetsnaz: The Inside Story of the Soviet Special Forces. By Viktor Suvorov. New York: W. W. Norton & Company, 1987. 213 pages. \$17.95.

Vladimir Rezun, a GRU major who defected to the West in 1978 and who writes under the pseudonym "Viktor Suvorov," has done much to ingrain the Soviet *spetsnaz* (special forces) bogeyman myth in the collective Western consciousness of Soviet military capabilities.

As a testament to the sad state of Western knowledge of Soviet special operations, Suvorov has been discredited in most senior intelligence circles and among academics, yet he

continues to be the most often-quoted open source and the indirect basis of most Western writings on the subject to date.

The latest and most outrageous of his work is *Spetsnaz: The Inside Story of the Soviet Special Forces*, the success of which may be taken as an inverse measure of how hyperbole can reward a hack writer where people have few facts but great interest in a subject. Suvorov cites virtually no sources, frequently digresses into paranoid anti-Soviet diatribe, and advances incredible propositions. He is either gullible, an agent of disinformation, or both: Much of what he writes reads more like third-hand gossip and barroom "war stories" than scholarship or personal experience.

The following passage, for example, appears on the third page of *Spetsnaz*: "The spetsnaz soldier loves his spade. He has more faith in its reliability and accuracy than he has in his Kalashnikov automatic. An interesting psychological detail has been observed in the kind of hand-to-hand confrontations which are the stock in trade of spetsnaz. If a soldier fires at an enemy armed with an automatic, the enemy also shoots at him. But if he doesn't fire at the enemy and throws a spade at him instead, the enemy simply drops his gun and jumps to one side." This is a book about people who throw spades and about soldiers who work with spades more surely and more accurately than they do with spoons at a table.

Suvorov knows very little about *spetsnaz* and, as the worst sort of bourgeois capitalist, repeats this "knowledge" in successive writings with little expansion or refinement. *Spetsnaz* contaminates an already unhealthy Western perspective on Soviet special-operations capabilities.

Suvorov does, however, have an alluring writing style that caters to what many in the West want to believe: His 1981 book about his exploits as a tank-company com-

mander in the 1968 invasion of Czechoslovakia, *The Liberators*, is a witty company-grade officer's view of the Soviet Army, his 1982 *Inside the Soviet Army* and 1984 *Inside Soviet Military Intelligence* make interesting reading, and his 1986 *Inside the Aquarium* reads like a good spy thriller. Although he has a good eye for how the Soviets operate and is strong on organization and knowledgeable of methodology, he is extraordinarily weak on history.

This may or may not be Suvorov's fault: Historical knowledge in the Soviet Union, and particularly in the organs of state intelligence, is compartmented. It has not been in the interests of the GRU (or the KGB) to teach its agents that the most prominent historical features of Soviet intelligence are mass purges and executions of intelligence operatives, that many Soviet intelligence operations have led to extreme political embarrassment, or that many of those who defect to the West are in fact happy and safe from Soviet retribution. Moreover, many Soviet historical records have been doctored or sanitized, or were lost during the Second World War.

Regardless, taken with other sources such as Walter Krivitskiy, Oleg Penkovskiy and Aleksandr Orlov, a few insights can be culled from some of what Suvorov writes. But not from *Spetsnaz*, where, except for naming countries and a few capital cities, virtually every major historical fact is wrong (e.g., his totally inaccurate description of *spetsnaz* in the 1945 Manchurian Campaign).

Even more disconcerting about Suvorov is that this snake-oil salesman is a wasted asset. He has been in the West for more than 10 years, and yet his British controllers have apparently not seen to it that he be provided with the straight historical data he never got in the Soviet Union. Given this sort of information, Suvorov might be able to provide his readers with a less exciting, but eminently more valuable, inside picture of Soviet military thinking as seen from the junior-field-grade-

officer level. Instead, the British have allowed Suvorov to perpetrate what Dimitri Simes has called "the functional equivalent of consumer fraud."

Until Suvorov can write using objectively verifiable historical facts, his books and articles should not be read. This is especially so where he writes of Soviet *spetsnaz*, about which he apparently knows next to nothing.

Maj. William H. Burgess III
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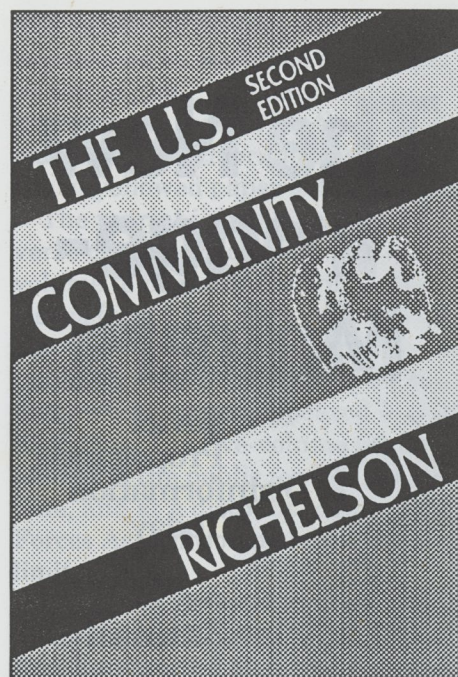
The U.S. Intelligence Community. By Jeffery Richelson. Cambridge, Mass.: Ballinger Publishing Company, 1989. ISBN 0-88730-245-9 (paper: 0-88730-226-2). 512 pages. \$39.95 (paper \$16.95).

This book's title implies a dry, lifeless topic. The serious reader should not be put off. Richelson has produced **the best single-volume compendium on the subject this reviewer has had the privilege to read.**

Anyone connected with operations and intelligence should have this book on their "close at hand" bookshelf. It can be used as a textbook for instructors or a reference book for planners. Since all of us in SOF interface with (and are a part of) the intelligence community, a book like this is exceptionally handy.

The book is simple and logically organized. The first chapter is a somewhat pedestrian introduction to the general subject of intelligence. What follows, however, is outstanding. Chapters 2-6 cover organizations, including national (ISA, NSA, etc.), DoD, military service, unified and specified command, and civilian. These alone are worth the price of the book and reading time.

Chapters 7-12 deal with sources, from signal intelligence, human intelligence, etc., to liaison agreements with our allies. The next six chapters (13-18) are functionally oriented, dealing with such topics as analysis, covert action and manage-



ment of various sources. The last chapter looks at contentious issues that are ongoing and have a major impact on us all.

Considering the potential dryness of the subject, Richelson does a fine job with regard to style, readability and intellectual depth. He provides the crucial information without losing the reader in a sea of non-essential data. His scholarship is evident and of a high quality. The research effort for a book such as this must have been enormous. He is to be hardly commended for producing such a useful volume.

While you may not want to read this book cover-to-cover like a novel, anyone who has had to search for widely scattered information on this subject will greatly appreciate having it all in one package. It will give the reader the distinct advantage of quick access to the essential facts for the majority of situations. This is the book's strongest point. If the intelligence community interests you (beyond the fictional level) or if a knowledge of it is crucial for the effective execution of your job, this book is highly recommended.

Maj. Steven Bucci
USAJFKSWCS
Fort Bragg, N.C.

The New Image-Makers

**Soviet
Propaganda
& Disinformation
Today**

Edited by
Ladislav Bittman

Pergamon-Bravary's

The New Image Makers. Edited by Ladislav Bittman. Oxford: Pergamon Press, 1988. ISBN 0-08-034939-0. 262 pages. \$24.95

Under Mikhail Gorbachev, Soviet propaganda campaigns designed to influence foreign public opinion have become more professional, more credible, and more effective. Their western-style trappings have made them more appealing to many in both western Europe and the United States, especially to those who want to believe the Soviet Union can't be as evil as it has been portrayed to be.

There is substantive intent in Gorbachev's efforts to make unprecedented changes within the heavily bureaucratic state system of government. These changes do not, however, alter the fact that Soviet propaganda and disinformation campaigns against the U.S. continue.

The New Image Makers focuses on these propaganda campaigns. It is a collection of 10 articles dealing with Soviet disinformation and international propaganda, edited by a leading authority on the subject of disinformation, Ladislav Bittman, a member of the Czech-

oslovakian intelligence service from 1954-1968.

While with the Czechoslovak intelligence, Bittman worked as an operative, diplomat and journalist in Asia, Western Europe and Latin America. For two years he was the deputy commander of the disinformation department of the Czechoslovak intelligence service. After the Soviet invasion of Czechoslovakia in 1968, Bittman asked for and received political asylum in the United States. He is now the director of the Program for the Study of Disinformation and associate professor of journalism at Boston University.

Other than Bittman, himself, contributing authors are prominent journalists and internationally recognized scholars: Jiri Hochman, former Czechoslovak journalist and now assistant professor of journalism at Ohio State University; Bernard Rubin, professor of governmental affairs and communication at Boston University; Igor Lukes, associate director of the Institute for the Study of Conflict, Ideology, and Policy, Boston University, and a fellow of the Russian Research Center, Harvard University; Timothy C. Morgan, editor-reporter for the Fitchburg-Leominster (Mass.) *Sentinel and Enterprise*; G. S. Kohli, assistant professor of television production at the Film and Television Institute of India; Jeremy Murray-Brown, associate professor of broadcasting at Boston University; J. A. Emerson Vermaat, Dutch writer and journalist; Roy Godson, associate professor of government at Georgetown University; and Paul Anastasi, Athens-based correspondent for the *Daily Telegraph* of London and part-time correspondent for *The New York Times*.

The first article, written by Bittman himself, presents the **difference between propaganda and disinformation**. It explains Soviet long-term disinformation objectives and describes Soviet active measures and disinformation cam-

paigns against the U.S. in which forgeries and paramilitary operations were used. Bittman points out how Soviet knowledge of and use of U.S. and western TV, broadcast and print-media markets give the Soviets access to the U.S. populace.

Hochman writes of the difficulties Soviet writers have encountered with the Glastnost "openness." Previously, all knew the boundaries within which they must write and how not to reflect negatively on the Soviet Union. Hochman concludes that however lenient current Soviet leaders have become with their journalists, it is not a policy which will lead to a free and open communications society as is enjoyed in the western democracies.

Rubin's chapter, "World's Apart: Disinformation Versus Public Interest," looks at the distinctive approaches used by western democracies, communist countries, and the Third World for the release of public information. Rubin writes that disinformation includes elements of censorship, manufacturing of illusion, and "enslavement" of minds and bodies. He further states that authoritarian societies "create and distribute disinformation as a policy matter to secure power bases of those in control." Third World leaders follow the Soviet lead less from an ideological support base than from an awareness that the control of media releases which support their intent is vital to their survival as leaders.

Lukes, Kohli and Morgan give detailed accounts of Soviet activities and strategies in radio-broadcast propaganda, distribution of Soviet propaganda in the United States and the work of Soviet persuaders in India.

Kohli details how the Soviets have been able to establish the conviction among the Indian public that the Soviet Union is India's time-tested friend while the U.S. is an anti-Indian power. He also cites specific forgeries which have

supported and embellished these activities.

The book also covers new Soviet propaganda and disinformation techniques. Murray-Brown provides a case-study approach of the comprehensive Soviet disinformation campaign launched against Soviet scientist Andrei Sakharov and his wife. Murray-Brown uses content analysis to show how the Western press and media reported and responded to these tactics.

Vermatt describes how religion is used by the Soviets as a propaganda vehicle and describes Soviet techniques used to influence the World Council of Churches. Roy Godson's "Aids—Made in the USA: Moscow's Contagious Campaign," is a short report on the now-recanted campaign that blamed the U.S. for the 1980s outbreak of the AIDS virus.

Godson describes how the Soviets, in collusion with selected newspapers outside the communist bloc, launched a tightly coordinated disinformation operation that reached African as well as western audiences and used forged evidence to "prove" that AIDS was the product of CIA-Pentagon experiments. Paul Anastasi identifies the major objectives of Soviet propaganda in Greece as well as themes used to promote these goals.

This book is a worthy anthology for those who wish to know more about the threat and capabilities of the Soviet Union in the areas of disinformation, propaganda techniques and propaganda objectives. It is particularly informative to those in special operations who deal with indigenous personnel, counterpropaganda and any special activities that the Soviets could and would use in their efforts to undermine the U.S. image, policies and effectiveness in dealing with global affairs.

Lt. Col. Jimmie L. Garrett
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The Green Beret. Published by the Information Office, 5th Special Forces Group (Airborne). Reprint — Houston, Texas: Radix Press, 1989. \$25.

Between 1966 and 1970, the 5th Special Forces Group's Information Office published a magazine for Special Forces soldiers serving in Southeast Asia. The brainchild of Col. Francis J. Kelly, the magazine covered subjects of interest to SF personnel — articles on local cultures, "A-camp" activities, news, awards and decorations. *The Green Beret* was always printed in limited numbers, usually one for each SF soldier in Southeast Asia and a few hundred extra. Despite the usual plea on the back cover (sometimes from a lissome Gretta Berrett) to "Send the *Green Beret* home," relatively few copies made it back state-side. Fewer still survived the inevitable moves, occasional divorces and frequent housecleanings.

It had to be something of a chore to assemble a complete backfile of the magazine for this reprint. It was certainly a labor of love to get them reprinted to the high standard of quality displayed in the copy reviewed. The text is perfectly reprinted, and many of the pictures (black and white, like the originals) show better contrast in the reprint.



The reprint is perfect-bound and reproduced on the same slick paper as the original. The only obvious difference in comparing the reprint side-by-side with original issues is the unyellowed paper of the reprint.

The reprint is being done in reverse chronological order: the last volume to be reprinted will be the issues from 1966. This volume will also include the index which the publishers have compiled of SF soldiers whose names appeared in the magazine. The five-volume set is offered to the public for \$25 per volume, and at a discount to Special Forces Association members for a limited time.

The Green Beret is an invaluable historical resource, as it provides a first-hand record of some aspects of the Special Forces' role in the conflict in Southeast Asia. It will also provide a trip down memory lane for many who served with SF in Southeast Asia. Those individuals from Chapter XXXIX of the Special Forces Association who put this reprint together have done an outstanding job from the technical standpoint and have provided a great service by making the magazine available again.

Fred Fuller
Reference Librarian
USAJFKSWCS
Fort Bragg, N.C.



Book reviews from readers are welcome and should address subjects of interest to special-operations forces. Reviews should be about 400-500 words long (approximately two double-spaced typewritten pages). Include your full name, rank, daytime phone number (preferably Autovon) and your mailing address. Send review to: Editor, Special Warfare, USAJFK-SWCS, Fort Bragg, NC 28307-5000.

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Special Warfare

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